

No. 33

**In The
SUPREME COURT OF THE UNITED STATES**

October Term, 1944

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

VS.

C. C. HARMON,
Respondent

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT**

Brief For The Respondent

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Dated: October 6, 1944

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(Washington).

Goodell v. Koch, 282 U.S. 118, (1930),
(Arizona).

Bender v. Pfaff, 282 U.S. 127, (1930),
(Louisiana).

Hopkins v. Bacon, 282 U.S. 122, (1930),
(Texas).

U.S. v. Malcolm, 282 U.S. 792, (1931),
(California).

and under long established administrative practice,
such interpretation and practice having repeatedly
received legislative approval.

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Lucas v. Earl, 281 U.S. 111, (1930).

Helvering v. Clifford, 309 U.S. 331, (1940).

Helvering v. Horst, 311 U. S. 11, (1940)

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Brief For The Respondent

OPINIONS BELOW

The opinions of the Tax Court and the Circuit Court of Appeals are reported in 1 T. C. 40 and 139 F. (2d) 211, respectively.

QUESTION PRESENTED

The basic question presented in this proceeding involves the general income tax provisions of the Revenue Act of 1938. (52 Stat. at L. 447-584) and is:

(2)

May the respondent and his wife each report in separate income tax returns one half of their community income?

The parties are agreed that if the respondent and his wife may each report one half of the community income in separate income tax returns, then the community deductions are divisible one half to respondent and one half to his wife, except the charitable contributions made by the respondent and a loss on account of worthless oil and gas royalties. The Tax Court held that these latter items were deductible by the respondent personally and not by the community. No appeal was taken from this part of the decision of the Tax Court.

Therefore, no question is presented in this proceeding involving either the community deductions or the non-community deductions.

STATUTES INVOLVED

The statutes involved are set forth in Appendix A, infra, pp. 41-55.

STATEMENT

The State of Oklahoma adopted a community property law, effective July 29, 1939. Under notice duly published by the respondent and his wife this law became irrevocably applicable to them and their property on and after November 1, 1939. (R. 37) For the period November 1 to December 31, 1939, inclusive, the respondent and his wife received community income and claimed community deductions with respect thereto, as follows (R. 38):

Income:

| | |
|--|-------------|
| Salary of respondent | \$ 3,333.34 |
| Dividends from respondent's stocks | 10,250.50 |
| Dividends from stocks of respondent's wife | 9,856.00 |
| Interest from obligations due respondent | 242.50 |
| Distributive share, respondent's interests in partnerships | 1,214.66 |
| Oil royalty net income of respondent | 2,744.36 |
| Oil royalty net income of respondent's wife | 1,909.65 |
| Oil lease net income of respondent | 9,722.58 |
| Oil lease net income of respondent's wife | 122.70 |
| Total Income | \$39,426.29 |

Deductions:

| | |
|--|-------------|
| State and local taxes of respondent | 106.28 |
| State and local taxes of respondent's wife | 197.18 |
| Charitable contributions of respondent | 30.00 |
| Field car expense of respondent | 175.36 |
| Office expense of respondent | 576.74 |
| Depreciation upon respondent's office furniture and fixtures | 9.32 |
| Travel expense of respondent | 180.76 |
| Depreciation upon respondent's business automobiles | 177.66 |
| Worthless royalties | 2,625.00 |
| Total Deductions | \$ 4,078.30 |

(1) The Tax Court held that this item was deductible by the respondent personally and not by the community. No appeal was taken from this part of the decision of the Tax Court.

(2) The Tax Court held that this item was deductible by respondent personally and not by the community. No appeal was taken from this part of the decision of the Tax Court.

Income from services of the respondent, income from his separate property and income from the separate property of his wife, are community income under the Oklahoma community property law. Respondent and his wife filed separate income tax returns for 1939 in which each reported one half of the community income listed above and deducted therein one half of the community deductions listed above. In addition, the respondent deducted as a non-community item the sum of \$5,724.00 on account of worthless oil and gas royalties (R. 38).

Petitioner determined an income tax deficiency of \$11,029.95 against the respondent, holding that he and his wife may not divide community income and community deductions for income tax purposes and computing such deficiency on all of the community income from services of the respondent and on all of the community income from his separate property. In determining this tax deficiency the petitioner excluded all of the community income from the separate property of respondent's wife, eliminated the community deduction consisting of state and local taxes of respondent's wife and disallowed the losses claimed by respondent with respect to worthless oil and gas royalties.

The Tax Court reversed the petitioner, holding that the respondent and his wife may equally divide their community income and community deductions for income tax purposes, that the charitable contributions made by the respondent and the losses on account of worthless oil and gas royalties claimed as community deductions were deductible by the respondent and not by the community, and that the losses on account of worth-

less oil and gas royalties claimed as a non-community deduction were deductible by the respondent (R. 36-57).

That part of the decision of the Tax Court holding that the respondent and his wife may equally divide their community income and community deductions for income tax purposes was appealed to the United States Circuit Court of Appeals for the Tenth Circuit (R. 67), and there affirmed, one Judge dissenting (R. 75-83).

SUMMARY OF ARGUMENT

The respondent and his wife may each report in separate income tax returns one half of their community income under the interpretation placed upon the general provisions of the income tax law¹ by the decisions of this Court in the cases of:

Poe v. Seaborn, 282 U. S. 101. (1930).
(Washington)².

Goodell v. Koch, 282 U. S. 118. (1930).
(Arizona)².

Bender v. Pfaff, 282 U. S. 127. (1930).
(Louisiana)².

Hopkins v. Bacon, 282 U. S. 122. (1930).
(Texas)².

U. S. v. Malcolm, 282 U. S. 792. (1931).
(California)².

and under long established administrative practice, such interpretation and practice having repeatedly received legislative approval.

¹ Secs. 11, 12 and 22(a), Revenue Act of 1938 (52 Stat. at L. 452, 454, 457).

² These cases involved the effect for Federal income tax purposes of the community property laws of the states indicated in parenthesis.

(6)

II

The decisions of this Court in such cases as

Lucas v. Earl, 281 U. S. 111. (1930);

Helvering v. Clifford, 309 U. S. 331.
(1940);

Helvering v. Horst, 311 U. S. 112. (1940);

Helvering v. Eubank, 311 U. S. 122.
(1940);

Harrison v. Schaffner, 312 U. S. 579.
(1941).

are inapplicable to, and not determinative of, the question presented.

III

Legislative motives, whatever they may have been, are not material to, nor determinative of, the question presented.

ARGUMENT

I

The question presented involves the general provisions of the Revenue Act of 1938 levying a normal tax and a surtax. (Secs. 11 and 12), upon the "net income of every individual" and defining the term "gross income". (Sec. 22 (a)). These sections of the Revenue Act of 1938 became Secs. 41, 42, and 22(a) of the Internal Revenue Code (1939). (hereinafter called the "Code"). (Appendix A, infra, p. 41).

The Code and the prior revenue acts do not contain

any provision specifically dealing with the relation of community property systems to the income tax, notwithstanding repeated suggestions by the Treasury that the Congress incorporate into the income tax law such a provision. (Appendix B, *infra*, pp. 56-60).

Under the general provisions of the income tax law, as construed in *Poe v. Seaborn*, *supra*, and the cases which have followed it, the taxability of community income to husbands and wives is controlled by the state law defining the interests owned by each in community property. The executive construction of these provisions of the income tax law has been the same, both prior and subsequent to the decisions in the *Poe v. Seaborn* group of cases, as the construction placed upon them by this Court in that group of decisions.

The Congress, with a full knowledge of these decisions, and of the executive construction which antedated and followed them, has repeatedly refused to change the general provisions of the income tax law levying a normal and a surtax upon the "net income of every individual." It has also repeatedly declined to incorporate in the income tax law a specific provision dealing with the taxability of community income. (Appendix B, *infra*, pp. 56-60). In these circumstances, the repeated use of the words "net income of every individual" in the income tax law, without change, beginning with the Revenue Act of 1918, 40 Stat. at L. 1057, and continuing down to and including the Code, endows the

(1) See discussion in *Poe v. Seaborn*, at pp. 113, 116.

Mimeograph 3853, Cumulative Bulletin, X.1, p. 439 (1930).

Mimeograph 3859, Cumulative Bulletin, X.1, p. 440 (1931).

foregoing judicial and executive constructions of these words with the force and effect of law.

OKLAHOMA DECISIONS

The first matter requiring examination here is whether or not, under the law of Oklahoma, a wife has a proprietary vested interest in the community property such as makes her an owner of one-half of the community income. (*Hopkins v. Bacon*, *supra*, pp. 125-126). An examination of the Oklahoma statutes and decisions conclusively establishes that she has such an interest in the community property as makes her an owner of one-half of the community income, and that the *Poe v. Seaborn* group of decisions answers, in respondent's favor, the question here presented.

In a proceeding before the Oklahoma Tax Commission, involving the Oklahoma community property law and the Oklahoma income tax law, the Commission held that all of the income here involved (except income from Oklahoma leases and royalties and the profit from the sale of a lease) was community income of respondent and his wife under the Oklahoma community property law, and held that each may report one half of such community income in determining the amount of income taxes due from each under the Oklahoma income tax law. (Order No. 9513, Appendix C, *infra*, pp. 61-66).

The respondent appealed to the Oklahoma Supreme Court from that portion of the Order of the Oklahoma

(1) *Van Vranken v. Helvering*, 115 F. (2d) 709, CCA, 2d 1940, cert. den. 313 U.S. 585, (1941); *Helvering v. Gritts*, 318 U.S. 371, 1943; *Douglas v. Commissioner*, 64 S. Ct. 988, 1944.

Tax Commission adverse to him. That Court, in *Harmon v. Oklahoma Tax Commission*, 189 Okla. 475, 118 P. (2d) 205 (1941), held the Oklahoma community property law constitutional. The Court also held that income from oil and gas royalties separately owned by the respondent and income from the sale of oil and gas produced from leases separately owned and operated by him, was the community or common property of the respondent and his wife, and that one half of such income was taxable to the respondent and the other one half to his wife under the Oklahoma income tax law.

The decisions of the Oklahoma Tax Commission and of the Oklahoma Supreme Court, *supra*, are, at present, the only Oklahoma decisions relating to the Oklahoma community property law. As previously indicated, these decisions also involved the construction of the general provisions of the Oklahoma income tax law. The language of these general provisions is substantially the same as the language of the general provisions of the Revenue Act of 1938 and prior revenue acts levying a normal tax and a surtax upon the "net income of every individual" and defining the term "gross income" (Appendix A, *infra*, pp. 41-55). As in the case of the Revenue Act of 1938 and the prior revenue acts, the Oklahoma income tax law contains no provision specifically dealing with the relation of the Oklahoma community property law to the Oklahoma income tax law. The construction placed upon the general provi-

(1) The Oklahoma Tax Commission is a judicial body. See e.g., §§ 1453, 1456, 1462, 1463, 1474, 1476, 1477, Title 48, Oklahoma Statutes Annotated.

sions of the Oklahoma income tax law by the Oklahoma Supreme Court rests entirely upon the conclusion of that Court that under the Oklahoma community property law the respondent and his wife each has a proprietary vested interest in community property such as makes each an owner of one half of the community income.

DECISIONS OF OTHER COMMUNITY PROPERTY STATES

In substance the provisions of the Oklahoma law were taken from the community property statutes of the other community property states. (Appendix D, *infra*, pp. 68-79). This adoption by Oklahoma carried with it the construction placed upon these statutes by the highest courts of the jurisdictions from which they were taken. It is a well settled general rule that when a statute is adopted from another state the prior construction placed on such statute by the highest court of that state is treated as if incorporated therein so as to govern its interpretation.

Therefore, the matter requiring examination reasonably turns to a consideration of the Oklahoma law in the light of the community property laws and decisions of the other community property states. Since the origin of the community property systems of all of the community property states is chiefly the Spanish law,² reference will also be made to it.

(1) *Maglin v. Leavitt*, 276 U.S. 58.

James v. Patterson, 114 Okla. 9, 244 P. 585, 274 U.S. 544.

Anderson v. Anderson, 149 Okla. 168, 282 P. 315.

Hartshorn v. Strader, 34 Okla. 23, 124 P. 591.

(2) de Funiak, *Principles of Community Property*, Vol. I, Chapter IV, pp.

THE COMMUNITY PROPERTY ELECTION

(Sections 51 and 52 of the Oklahoma Law)

These sections of the Oklahoma law provide that spouses may elect to have the community property law apply to them and to their property. This election must be evidenced by a formally executed instrument and made a public record. It involves no more than the making of a choice between the common law marital property ownership concepts and the community property ownership concepts. Once made, the choice is irrevocable, and the Oklahoma community property law thereafter controls the manner in which spouses share the ownership of all income and property. During the marriage the application of the community property law may not be modified, altered, or changed in any manner whatsoever by any contract between the spouses.

As early as 693 A. D. the Spanish law governing community property ownership provided that the spouses might, by contract, agree or stipulate, as between themselves, either before, at the time of, during, or after the marriage, as to the manner in which they would share the ownership of the property earned or gained during the marriage. Under this law husband and wife were regarded as separate persons and could validly enter into contracts between themselves. This right of choice has continued to exist as a fundamental principle of the Spanish community property law.

(1) See de Lunsak, Principles of Community Property, Vol. 1, Sec. 135, pp. 386-387, authorities there cited; also Vol. 2 of the same work, Appendix I, translations of the early Spanish community property laws, pp. 1-3.

The community property laws of most of the community property states provide a choice to spouses between the community property ownership concepts and the common law property ownership concepts. The making of this choice under these laws is placed wholly within the control of the spouses. It may be exercised through the medium of a recission, during marriage, of an antenuptial agreement.¹ Although the method varies in form from that by which the Oklahoma choice is made, the ultimate result reached is exactly the same: Marital property ownership under the antenuptial agreement is cast aside and community property ownership is substituted, just as in Oklahoma common law marital property ownership is cast aside and community property ownership is substituted.

In the community property states of Washington, Louisiana, California, and Arizona, the choice may be made through the medium of agreements entered into during marriage. The following comments of the Supreme Court of the State of Washington are for characterizations of the general rule.²

In *Dobbins v. Dexter Horton & Co.*, 162 Wash. 423, 113 Pac. 1088, an oral agreement that a wife's personal earnings should be her separate property was sustained. In *Gage v.*

¹ (1) Antenuptial agreements are authorized by statute in the following community property states: California, §§ 137-160; Arizona, § 11; Colorado, 1941; Idaho, §§ 51, 917-96, 91, 923, 91, 905; Utah, §§ 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

(2) See also *Harvey v. Harvey*, 70 Cal. 420, 955, 11 Cal. 2d 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Gage (78 Wash. 262, 138 Pac. 886) a similar agreement was pronounced valid. In *Union Securities Co. v. Smith* (93 Wash. 115, 160 Pac. 304, Ann. Cas. 1918E, 710) an oral agreement was involved which provided that all property acquired by husband and wife should be their separate property. This court said, 'Such agreements, made after marriage and mutually observed, are valid.'

* * * * *

These cases hold that community property may be changed to separate property regardless of section 5919. If this is so, the converse must be true, that separate property may be changed by a proper conveyance or agreement into community property. * * * (*Volz v. Zang*, 113 Wash. 378, 194 P. 409 at p. 410).

It is undoubtedly true that husband and wife may (by proper agreement or conveyance, change their separate property into community property and their community property into separate property. * * * (*State v. Sailors*, 180 Wash. 269, 39 P. (2d) 397 at p. 399).

Volz v. Zang, *supra*, was decided in 1920, some ten years before the decision in *Poe v. Seaborn*, *supra*. The long established administrative practice of the petitioner recognizes the efficacy of agreements of this character for Federal income tax purposes.

Under the Spanish system of community property, as in the case of most of the community property states,

(1) *Remington Code* (Washington).

(2) G.C.M. 19248, published in 1937 Cumulative Bulletin 1937-2, July-December, 1937, pp. 59, 60, re Washington.
G.C.M. 18584, published in 1937 Cumulative Bulletin 1937-2, July-December, 1937, pp. 58, 59, re California.

the choice is much larger in scope and much more flexible than the choice permitted by the Oklahoma law. Once a choice is made under the Oklahoma law, it becomes irrevocable, and is removed from the reach of the contractual capacity and control of the spouses. This is not true of the community property laws of most of the other states. The spouses in most of the other community property states may make completely new choices from time to time, or at any time, as may be desired, and as changing circumstances and conditions present an opportunity for a more advantageous rearrangement of marital property ownership.

The choice permitted by the Oklahoma law is inherently a legally permissible option. Without the law, it would not exist. No transfer or assignment is required. Spouses may or may not act concurrently. It is not required that they be moved by the same considerations or by any legal consideration at all. No consideration passes between the spouses. No gift or transfer of property from either to the other, or from either or both to the community, is involved. Once the choice is made it may not be changed. The marital status is an essential condition precedent. Without it the choice can not be made. Therefore, the inherent nature of the choice permitted by the Oklahoma law, when contrasted with the choice permitted by other community property laws, strengthens rather than weakens the Oklahoma law.

Obviously there is nothing novel or unusual in the choice permitted under the Oklahoma law. Rather to the contrary, it is a common and usual thing in systems of community property law.

DEFINITIONS OF SEPARATE PROPERTY

(Sections 53, 54 and 55 of the Oklahoma Law)

Definitions of separate property involve the basic concept of community property ownership only in an indirect way. Whatever is defined as separate property is excluded from the operation of the basic community property ownership concepts. The definitions of separate property in the Oklahoma law were taken from the Texas community property statutes, and are substantially the same. A comparison of these sections of the Oklahoma law with the corresponding sections of the Texas statutes is set forth in Appendix D, *infra*, pp. 68-72.

DEFINITION OF COMMUNITY PROPERTY — MANAGEMENT AND CONTROL

(Section 56 of the Oklahoma Law)

This section of the Oklahoma law defines the community or common property, and provides that each spouse shall be vested with an undivided one-half interest therein. The community or common property includes the earnings of each spouse and the income from the separate property of each. This section of the Oklahoma law is a clear and unequivocal statement of the fundamental community property ownership concept. The Oklahoma Supreme Court has so held, and that its enactment was within the power of the Oklahoma Legislature.

In some of the community property states — Texas, for example — the statutory statement of community property ownership is not as complete as it is in the Oklahoma law. In the Texas statutes there is no provision to the effect that each spouse shall be vested with an undivided one-half interest in the community or common property. It is, however, settled in Texas that a wife has a present vested interest in the community or common property. *Arnold v. Leonard*, 114 Tex. 535, 273 S. W. 799. But, generally speaking, the other states use language fairly comparable to the language of the Oklahoma law in defining community property ownership.

The second and third sentences, through the first proviso of Section 56 of the Oklahoma law provide that the wife shall have the management and control of the community property consisting of her earnings and other property title to which stands in her name, and that the husband shall have management and control over all other community property subject to the usual limitations as to the disposition of the homestead.

As previously pointed out it is settled that under Section 56 of the Oklahoma law husbands and wives each own a one half vested interest in the community property.

The management and control provisions of the Oklahoma law are, therefore, incidental and not basic. Moreover, a division of control and management between spouses is not novel. In several of the other community

(1) *Harmon v. Oklahoma Tax Commission*, 187 Okla. 475, 118 P. (2d) 205.

property law states, notably Washington, New Mexico, Idaho, and California, a division of management and control between the spouses has existed for many years, and existed at the time this Court decided *Poe v. Seaborn*, *supra*, involving the Washington law.¹

In the dissenting opinion below it is suggested that no other community property law gives the same degree of control to the managing spouse as is accorded under the Oklahoma law. In Texas, for example, the husband as manager has complete power of control and management, and is not required to seek or obtain the consent or approval of the wife, and this was the Texas law at the time of *Hopkins v. Bacon*, *supra*. In Louisiana the managing spouse has complete control, and is not required to obtain or seek the consent or approval of the non-managing spouse.² This was the Louisiana law at the time of *Bender v. Pfaff*, *supra*. These powers of management and control are subject to the inherent qualification that they may not be used to condone fraud, or, as between spouses, to deny the ownership of the community or common property of either spouse.³

Under all systems of community property laws the husband and the wife are considered as constituting a compound creature known as a community. The proprietary interests of the husband and wife in the com-

(1) See Appendix E *infra* p. 86.

(2) *Poe v. Seaborn*, *supra*, p. 110.
Hopkins v. Bacon, *supra*, p. 126, and cases there cited.
Goodell v. Koch, *supra*, p. 121.

munity or common property are equal. These interests are not merely united. They are unified and identified as the interests of the community. The community as such acquires property and income. The power to deal with and dispose of community property and community income must be delegated to some natural person, as is true of a corporation or a partnership. *Warburton v. White*, 176 U. S. 484. Under the Oklahoma law this power is delegated to the husband and the wife, and is regulated by that law. The law makes each the agent of the community.

Section 56 of the Oklahoma law and corresponding provisions of the Texas statutes are set forth in Appendix D. *infra*, pp. 70-71.

DEBTS AND LIABILITIES OF SPOUSES

(Section 57 of the Oklahoma Law)

A comparison of this section of the Oklahoma law with corresponding provisions of the Texas statutes is set forth in Appendix D. *infra*, pp. 72-73. For convenient reference, they are again set forth here.

OKLAHOMA

Sec. 57. The separate property of the wife and that portion of community property record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not the debts or liabilities of the husband. The separate property of the husband

TEXAS

Art. 4613. All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise or descent, as also the increase of all lands thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife either before or after mar-

and that portion of the community property, record title to which is in his name or which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. * * *

riage, except for necessities furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control, and disposition of his separate property, both real and personal. (Const. art. 16, §. 15; Acts 1848, p. 77; G. L. vol. 3, p. 77; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1929, 41st Leg., p. 66, ch. 32, § 1.)

Art. 4616. "Neither the separate property of the wife nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband."

Art. 4619. * * * During coverture the common property of the husband and wife may be disposed of by the husband only. * * *

Art. 4620. "The community property of the husband and wife shall be liable for their debts contracted during marriage except in such cases as are specially excepted by law. (Acts 1856, p. 51; G. L. vol. 4, p. 469; P. D. 4646.)

Art. 4621. "The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessities. * * *

Art. 4623. "Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessities
* * *

On the basis of the foregoing, the separate property of the wife in Oklahoma and Texas is subject to her debts but not to debts of the husband, and the community property under the control of the wife in both states is subject to her debts and not those of the husband. Also, the separate property of the husband in both states is subject to his debts and not to debts of the wife, and community property under the husband's control is subject to his debts and not those of the wife. The difference between the statutory provisions of the two states is that under Section 56 of the Oklahoma law the husband has control only of that part of the community property title to which is in his name while in Texas all community property is under the husband's control and subject to his disposition, except the wife's personal earnings and income from her separate property.

In the dissenting opinion below following a reference to Section 57 of the Oklahoma law, the following appears (R. 82)

From this, it follows that if the community estate stands in the name of the husband or is entirely under his control, it is all subject to his personal debts and obligations and may be consumed entirely, if necessary, in payment of such

debts. Where, then, is that protection of the wife's one-half interest in the community estate which the Supreme Court stresses so in the Poe case. It simply does not exist. Under Section 57 the community estate may be wiped out completely in satisfaction of the separate debts of the husband.

Section 57 of the Oklahoma law was taken largely from the community property law of Texas, and the Oklahoma courts are bound to follow the Texas decisions construing that law.

Before discussing the Texas decisions, attention is especially called to the fact that the particular situation assumed by the dissenting opinion below obviously would be an extreme one in Oklahoma, since under Section 56 management and control are divided between the husband and wife. The particular situation assumed would not be an extreme one in Texas, for the reason that a Texas husband has the management and control of all community property. In view of this, the assumed situation may be usual in Texas. Consequently, if the Texas courts considered and disposed of this problem before the enactment of the Oklahoma law, the question posed by the dissenting opinion below, on this basis alone, would stand completely answered.

Under Article 4619 of Vernon's Annotated Civil Statutes of the State of Texas, Revision of 1925, the husband has the management and control of all community property. It is an absolute power without limitation, and it was well settled in Texas at the time the Oklahoma law was enacted that the entire community estate, except only the earnings of the wife and

the income from her separate property, could be taken to satisfy the separate debts of the husband.¹ Two of the cases cited in the footnote were decided prior to the decision in *Hopkins v. Bacon*, *supra*. Also, in Texas the property purchased with the wife's personal earnings is subject to the payment of the separate debts of the husband. *Strickland v. Webster*, 131 Tex. 23 (1938), 112 S. W. (2d) 1047.

Under the Texas statutes, as is the case under the Oklahoma law, there is no provision requiring the husband to account to his wife, or to the community, for community property appropriated to his personal ends. The Texas decisions rendered prior to the enactment of the Oklahoma law, although not entirely clear, appear to hold that the sole remedy of a wife is for an accounting at the termination of the community status, and that she is without an injunctive remedy during the continuance of the community status.² The cases cited in the footnote were decided prior to the decision in *Hopkins v. Bacon*, *supra*.

The reasoning of the Texas court in the cited cases is not remote or unreal. Litigation between husbands and wives during the community status obviously would disrupt the unity and tranquility so essential to the successful maintenance of the community status. Public policy, therefore, demands that such litigation be dis-

(1) *Moodu v. Smeot*, 78 Tex. 119 (1890), 14 S.W. 285; *Cram v. Austin*, 6 S.W. (2d) 348 (Com. App. Texas 1928); *Lovely v. Cockerell*, 63 S.W. (2d) 4009 (Com. App. Texas 1933).

(2) See *Rudasill v. Rudasill*, 219 S.W. 843 (Ct. Civ. App. Tex. 1920); *Coleman v. Coleman*, 293 S.W. 695 (Ct. Civ. App. Tex. 1927).

couraged. The same public policy dictates that third parties who deal with the husband must be assured that the wife will not be permitted to nullify his transactions. The powers of partners are apt and exact analogies.

Under the decisions of the Texas Courts, however, it was well settled at the time of the enactment of the Oklahoma law that a wife, at the termination of the community status was entitled to an accounting where community property had been used for the benefit of the husband's separate estate.

Under Texas decisions a wife is not without a remedy in the situation under discussion. Therefore, in Oklahoma she is not without a remedy. For the same reason, an Oklahoma husband, if placed in the same position, is not without a remedy.

That Oklahoma spouses have adequate remedies in the foregoing situation is established by the Oklahoma statutes and decisions dealing generally with the rights of husbands and wives. Section 5, Title 32, Oklahoma Statutes Annotated, provides that husbands and wives, in their transactions with each other, are subject to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts. The Oklahoma Supreme Court has held that whenever a husband or wife is false to the other and fraudulently or through coercion obtains an unjust advantage over the other, relief will be

(1) *Martin v. Moran*, 11 Tex. Civ. App. 509 (1895), 32 S.W. 964; *Rowlett v. Mitchell*, 52 Tex. Civ. App. 589 (1908), 114 S.W. 845; *Watson v. Harris*, 61 Tex. Civ. App. 263 (1910), 130 S.W. 237; *Davis v. Davis*, 186 S.W. 775 (Tex.), 11916; *Dahan v. Dahan*, 33 S.W. (2d) 620 (Sup. Ct. Tex. 1935); *Olden v. Alexander*, 171 S.W. (2d) 328 (Sup. Ct. Tex. 1943).

granted to the injured spouse. *Mann v. Mann*, 135 Okla. 211 (1929), 275 P. 348. Furthermore it is earnestly urged and respectfully submitted that under Section 15, Title 32, Oklahoma Statutes Annotated, an Oklahoma wife may obtain injunctive relief to protect her interests, and that she may do so during the existence of the community status, since it is now the settled law in Oklahoma that she owns a proprietary vested interest in the community property.

Therefore, it is respectfully submitted that the dissenting opinion below is in error in concluding that by reason of Section 57 of the Oklahoma law there is no protection of the wife's one-half interest in the community property under Oklahoma law. The wife in Oklahoma is provided more protection than is the wife in Texas.

CREDITOR'S RIGHTS IN COMMUNITY PROPERTY

(Section 58 of the Oklahoma Law)

In substance this section provides that where community property is transferred from one spouse to the other, creditors of the spouse making the transfer may follow the transferred property into the hands of the other spouse. It is merely a statement of the rule that transfers to defeat creditors are invalid, a universally recognized rule of equity jurisprudence. This section also provides that husband and wife, on paying community debts, shall, as between themselves, charge the same against the community property.

(1) *Harmon v. Oklahoma Tax Commission*, 189 Okla. 475, 118 P. (2d) 205

The provisions of the Texas law and Section 58 of the Oklahoma law are set forth in Appendix D, infra pp. 73-74.

CONVEYANCES BETWEEN SPOUSES OF COMMUNITY PROPERTY — CREDITOR'S RIGHTS NOT AFFECTED

(Section 59 of the Oklahoma Law)

This section provides that either spouse may give, grant, bargain, sell, or convey his or her interest in community property to the other, and thereby divest the property so transferred of all community claims or demands, and vest the same in the grantee as the separate property of the grantee. It further provides that the transfers so authorized shall not affect any existing equity in favor of creditors of the grantor existing at the time of such transfer, gift, or encumbrance.

This section of the Oklahoma law is a further specific statutory recognition of the existence, in each spouse, of the ownership of a proprietary vested interest in the community or common property. To deny this is to say that this section of the Oklahoma law authorizes conveyances of property not owned by the grantee and that the section, therefore, is a nullity.

The transfers authorized under this section of the Oklahoma law do not affect the community income, since under Section 56 of the Oklahoma law income from separate property is community property. Undoubtedly gifts from one spouse to the other under this section of the Oklahoma law would be subject to the Federal gift tax, as well as to the Oklahoma gift tax.

A comparative statement of this section of the Oklahoma law and the comparable provisions of the Texas law are set forth in Appendix D, *infra*, pp. 74-75.

DISSOLUTION OF MARRIAGE—DIVISION OF COMMUNITY PROPERTY

(Section 60 of the Oklahoma Law)

This provision of the Oklahoma law provides that upon divorce the community property shall be divided between the spouses in such proportions as the court granting the divorce decree shall deem just and equitable, and that such division shall be subject to revision on appeal in all respects, including the exercise of discretion by the court below.

The same sort of a division was provided for in the Texas and Washington statutes at the time this Court promulgated its decisions in *Hopkins v. Bacon*, *supra*, and *Poe v. Seaborn*, *supra*.¹ No changes have since been made in these statutes. Similar provisions are found in the Arizona and New Mexico statutes.²

This section of the Oklahoma law and the corresponding provisions of the Texas and Washington laws are set forth in Appendix D, *infra*, pp. 75-76.

(1) Texas: Art. 4638, Vernon's Texas Statutes (1936).
Washington: Sec. 989, Remington's Revised Statutes (1932).

(2) Arizona: Sec. 27-805, Arizona Code Annotated (1939).
New Mexico: Sec. 68-506, New Mexico Statutes Annotated (1929).

INCAPACITY OF SPOUSES AND PROCEDURE FOR SUBSTITUTION OF OTHER SPOUSE

(Sections 61-64 of the Oklahoma Law)

These sections of the Oklahoma law provide, in substance, that if one of the spouses is incapacitated because of insanity, imprisonment, abandonment, habitual drunkenness, or for other similar reasons, the other spouse may, through appropriate procedure, obtain the management and control of the entire community property.

The provisions of these sections of the Oklahoma law are substantially the same as the provisions of the New Mexico law dealing with these matters.

These sections of the Oklahoma law and the corresponding provisions of the New Mexico law are set forth in Appendix D, *infra*, pp. 76-78.

DEATH OF SPOUSE — ADMINISTRATION OF COMMUNITY PROPERTY — INTEREST OF SURVIVOR — HOMESTEAD

(Section 65 of the Oklahoma Law)

This is the concluding section of the Oklahoma law. It provides that upon the death of a spouse, the surviving spouse shall administer all of the community property, settle its affairs in the same manner as is prescribed for the settlement of the affairs of a partnership upon dissolution under Oklahoma law, and that upon the payment of all community debts the surviving spouse shall distribute the undivided one half interest owned by the deceased spouse in the community property to his or her personal representatives for administration.

This provision of the Oklahoma law is another instance where the interests owned by each spouse in the

common or community property is unequivocally recognized as a vested proprietary interest. Moreover, this section of the statute recognizes the existence of a relationship analogous to the relationship existing between the members of an ordinary partnership, and recognizes that each spouse is the agent of the other and the community. Further, it definitely recognizes absolute ownership in the deceased spouse, and can not be classed as an expectant or forced heir statute.

The provisions of this section of the Oklahoma law are comparable to the provisions of the Washington law and the provisions of the Arizona law, the Idaho law, and the California law.

This section of the Oklahoma law and the corresponding provisions of the Washington law are set forth in Appendix D, *infra*, pp. 78-79.

Turning to the petitioner's brief it is noted that he argues that the Oklahoma law is a community property system in name only, chiefly for the reason that the rights of Oklahoma spouses, to whom the law does not apply are the same as the rights of Oklahoma spouses to whom the law does apply. He seeks to sustain this argument with a comparative statement of his views and opinions as to the property rights of husbands and wives under Oklahoma laws (See Appendix B, Petitioner's Brief, pp. 58 and 59).

That argument in no way relates to the question presented for decision. The answer to that question depends on whether or not under the Oklahoma law spouses have a proprietary vested interest in community income such as makes each an owner of one half of that income.

(1) Washington, Sec. 1542, Remington's Revised Statutes (1932); Arizona, Sec. 39, 109, Arizona Code Annotated (1939); Idaho, Secs. 14, 113 and 14, 114, Idaho Code Annotated (1932); California, Secs. 201 and 201.5, California Probate Code (1941).

Petitioner's views and comments upon which he bases this argument are set forth in full in Appendix E, *infra*, pp. 80-85, together with comments on behalf of the respondent. This Appendix is respectfully called to the attention of this Court.

Petitioner asserts again and again that the Oklahoma community property law is not orthodox, is not traditional, is not historical. The question presented in this proceeding does not require or render material a determination of any of these matters.

It has been shown that the Oklahoma law, in all essential respects, is the same as most of the laws of the other community property states; that on comparison the Oklahoma law gains in statute and strength; and that the basic community property ownership concept incorporated into it is found in the laws of all of the other community property states. The only matter requiring determination here is whether under the Oklahoma law a wife "has a proprietary vested interest in the community property such as makes her an owner of one-half of the community income."

It is true that there is a considerable variety in the manner in which the incidental rights, duties, and obligations of spouses and the rights of creditors and other third parties are treated under the community property laws of the various states. Distinctions based upon differences of this sort are not material to, nor determinative of, the question presented. The controlling factor is ownership. (*The Poe v. Seaborn*, group of cases). The variety in treatment accorded some of the incidental rights or powers of spouses and of creditors by the community property states, and the uniformity in the treatment of the basic community property ownership concept, is set forth on a comparative basis in Appendix F, *infra*, p. 86.

The foregoing discussion conclusively establishes that under the Oklahoma law a wife "has a proprietary vested interest in the community property such as makes her an owner of one half of the community income" that the same is true of a husband; that there is no basis, in theory or fact, for distinguishing the Oklahoma law from the community property laws of any of the states; and that the Oklahoma law fully meets the test of ownership established and recognized in the decisions of this Court in the *Poe v. Seaborn* group of cases, and by long established administrative practice. Therefore, the question here presented stands decided in favor of the respondent.

II "

In the case of *Lucas v. Earl, supra*, Mr. Earl and his wife contracted that any property they had or might thereafter acquire in any way, including their earnings, were to be treated and considered as being received, and owned by them as joint tenants. The question there decided was whether Mr. Earl could be taxed for the whole of his earnings or should be taxed on only one half thereof. This Court held that Mr. Earl was taxable on all of his earnings.

In *Helvering v. Clifford, supra*, it was recognized that under local law the short-term trust in that case was valid and gave the beneficiary the income from the trust corpus. The trust reserved unto the grantor discretionary power over income distributions. Upon termination the corpus reverted to the grantor, and while the trust was in existence the corpus was subject to the control of the grantor very much the same as if he were in fact the owner. The issue in that case was whether the grantor, after the trust had been established, in fact remained the owner of the corpus. This Court held that the grantor was the owner of the corpus, and that he was taxable on the trust income.

In *Helvering v. Horst*, *supra*, the question there was whether income in the form of an interest coupon was taxable to the owner of the bond from which the coupon was taken, notwithstanding the fact that the owner had divested himself of every right represented by the interest coupon by its transfer and delivery prior to maturity. This Court held that the owner of the bond was taxable on the interest coupon when paid. *Harrison v. Schaffner*, *supra*, and *Helvering v. Eubank*, *supra*, are to the same general effect.

The cases of *Helvering v. Clifford*, *supra*, *Helvering v. Horst*, *supra*, *Helvering v. Eubank*, *supra*, and *Harrison v. Schaffner*, *supra*, represent applications of the rule of law in the field of income taxation first applied in the *Lucas v. Earl* case. All of these cases stand for the same general principle, the later decisions resting on the *Lucas v. Earl* case. None of these cases involved the taxation of community income.

In the community property income tax cases decided by this Court in 1930 the Court's principal opinion was delivered in *Poe v. Seahorn*, *supra*. In this opinion, at pp. 116-117, 282 U. S. 104, this Court discussed and distinguished its earlier opinion in *Lucas v. Earl*, as well as its opinions in the cases of *U. S. v. Robbins*, 269 U. S. 315, and *Corliss v. Bowers*, 281 U. S. 376, as follows:

"In the Robbins Case, we found that the law of California, as construed by her own courts, gave the wife a mere expectancy and that the property rights of the husband during the life of the community were so complete that he was in fact the owner. Moreover, we there pointed out that this accorded with the executive construction of the act as to California.

The Corliss Case, raised no issue as to the intent of Congress, but as to its power. We held

that where a donor retains the power at any time to revest himself with the principal of the gift, Congress may declare that he still owns the income. While he has technically parted with title, yet he in fact retains ownership, and all its incidents. But here the husband never has ownership. That is in the community at the moment of acquisition.

In the Earl Case a husband and wife contracted that any property they had or might thereafter acquire in any way, either by earnings (including salaries, fees, etc.), or any rights, by contract or otherwise, shall be treated and considered and hereby is declared to be received, held, taken and owned by us as joint tenants * * *. We held that assuming the validity of the contract under local law, it still remained true that the husband's professional fees, earned in years subsequent to the date of the contract, were his individual income, 'derived from salaries, wages, or compensation for personal services', under §§ 210, 211, 212 (a) and 213 of the Revenue Act of 1918. The very assignment in that case was bottomed on the fact that the earnings would be the husband's property, else there would have been nothing on which it could operate. *That case presents quite a different question from this, because here, by law, the earnings are never the property of the husband, but that of the community.* (Italics ours)

The Lucas v. Earl group of cases is distinguishable from the instant case for the reasons noted by this Court in Poe v. Seaborn. Here, as in the Seaborn case, the income is that of the community. It is acquired by the community and vests in the community at the moment of acquisition. As this Court aptly and with

exactness stated, the assignment in the *Earl* case "was bottomed on the fact that the earnings would be the husband's property, else there would have been nothing on which it could operate." Therefore the *Lucas v. Earl* group of cases are wholly inapplicable in the instant case.

The petitioner's argument that the *Lucas v. Earl* group of cases is applicable seems to be based upon the proposition that the choice permitted under the Oklahoma law is a contract such as was involved in that group of cases, and that at all events nothing is accomplished through the Oklahoma choice that can not be accomplished through an exercise of the contractual capacity of the parties.

There are two essential factors in the Oklahoma choice which are in no way related or essential to the validity of transactions of the class involved in the *Lucas v. Earl* group of cases. First: the Oklahoma law, because without the Oklahoma law the choice could not exist; second: marriage, because the choice can be made only by a husband and wife.

The right of the Oklahoma Legislature to enact the Oklahoma law is not challenged by the petitioner. The Oklahoma law is definitely and completely domestic and therefore subject only to the legislative power of the State of Oklahoma. Under the Oklahoma Constitution the Legislature was empowered to enact the Oklahoma law and it is constitutional. The choice, therefore has been created by the only sovereign empowered to do so. That sovereign when creating it, specified how and by whom it might be exercised. No such restrictions affect the kind of transactions involved in the *Lucas v. Earl* group of cases.

The validity of the contracts, or agreements, or whatever they may be called, of the kind considered in the *Lucas v. Earl* group of cases, does not depend upon whether or not the parties to such contracts are husband and wife. This is not true of the choice permitted by the Oklahoma law. Here the marital relationship is an absolute condition precedent to the making of the permitted choice. On the other hand, the *Lucas v. Earl* group of cases is concerned with situations where any two or more persons *sui juris*, regardless of marital status, enter into contracts as to any matter not lawfully removed from the reach of their contractual capacity.

The choice permitted by the Oklahoma law differs from the agreements involved in the *Lucas v. Earl* group of cases in other vital respects. Once made, it is irrevocable. Thereafter, during the existence of the marital status, the spouses are absolutely powerless to make another choice. In the case of contracts of the class involved in the *Lucas v. Earl* group of cases, any change may be made which the parties may agree upon even though there may be embodied in such contracts a provision purporting to endow them with irrevocability or immutability. Contractually the power to do, if it exists at all, carries with it the power to undo.

For the foregoing reasons it is respectfully submitted that the *Lucas v. Earl* group of cases are not applicable to, nor determinative of, the question presented.

Pursuing his argument further that the *Poe v. Seaborn* group of cases is inapplicable, the petitioner, on brief pp. 33-36, urges that the part of the community income of the respondent and his wife consisting of income from the respondent's separate property, as distinguished from income received by the respondent for his personal services, is taxable to respondent. The petitioner cites the *Clifford*, *Horst*, and *Schaffner* cases and the cases of

Burnet v. Leininger, 285 U.S. 136, and *Helvering v. Stuart*, 317 U.S. 154. These cases hold generally that income from property is taxable to the owner of the property producing the income, even though someone else has the right to, and in fact receives such income. None of these cases in any way whatsoever relates to the question presented, since none of them involved the taxability of community income under the Code or any prior income tax law. For this reason alone they are clearly inapplicable in the instant matter and in no way contribute to a solution of the issue here involved.

The petitioner attempts to bolster his argument by making the sweeping statement that "the early community property decisions are in no way applicable to this point, for none of them involved the issue which is here raised." (Petitioner's brief, page 35.) In the same paragraph he admits that *Hopkins v. Bacon*, *supra*, which arose in Texas, involved income from the wife's separate property which, under Texas law, was and is community income.

The items of income and deductions involved in *Hopkins v. Bacon*, *supra*, were as follows:

"Income:

| | |
|--|-------------|
| Salary of Mr. Bacon | \$ 3,600.00 |
| Directors' fees of Mr. Bacon | 120.00 |
| Dividends (partly from community stocks and partly from separate stocks of Mrs. Bacon) | 29,798.40 |
| Rents | 5,312.18 |
| Oil royalties | 78.50 |
| Interest (upon community money and upon separate money of Mrs. Bacon) | 9,301.77 |

\$48,210.85.

Deductions:

| | |
|-------------------------|-------------|
| Interest paid | \$ 2,173.51 |
| Taxes paid | 1,459.82 |
| Rental commissions paid | 900.00 |
| Accounting fees | 612.88 |
| Oil depletion | 21.59 |
| Contributions | 845.00 |

\$ 6,012.80

Net income: \$42,198.05¹

The foregoing items of income and deductions were reported by Mr. and Mrs. Bacon in separate income tax returns for the year 1927, each reporting in such returns one half of the total income of \$42,198.05.¹

In the course of its opinion in that case this Court discussed the Texas community property statutes in the following language:

The statutes contain sweeping provisions as to what shall be included in community property. They provide that each spouse shall have testamentary power over his or her respective interest in the community property. In the event of failure to exercise such testamentary power they provide that the property shall go in the first instance to the descendants of the deceased spouse. They provide, as is usual in states having the community system, that the husband shall have power of management and control such that he may deal with community property very much

(1) The information set forth in this paragraph was obtained from the record in the case of *Hopkins v. Bacon*, *supra*.

as if it were his own. In spite of this, however, it is settled that in Texas the wife has a present vested interest in such property. *Arnold v. Leonard*, 114 Tex. 535, 273 S. W. 799. Her interest is said to be equal to the husband's. *Wright v. Hays*, 10 Tex. 130, 60 Am. Dec. 200. It is held that the spouses' rights of property in the effects of the community are perfectly equivalent to each other. *Arnold v. Leonard, supra*. These expressions as to the wife's interest are confirmed by the authorities holding that if the husband, as agent of the community, acts in fraud of the wife's rights, she is not without remedy in the courts. *Stramler v. Coe*, 15 Tex. 211; *Martin v. Moran*, 11 Tex. Civ. App. 509, 32 S. W. 904; *Watson v. Harris*, 61 Tex. Civ. App. 263, 130 S. W. 237; *Davis v. Davis* (Tex. Civ. App.) 186 S. W. 775."

This Court held that the interest of the wife in community property in Texas is a present vested interest equal and equivalent to that of her husband, and that she and her husband were entitled to make separate income tax returns, each reporting one half of the community income.

The parallel between *Hopkins v. Bacon* and the instant case is complete.

On authority of this and the other community property decisions relating to the states of Washington, Arizona, and Louisiana, the Treasury Department in 1930 recognized that husbands and wives in Idaho, Nevada and New Mexico were entitled to make separate income tax returns, reporting in each such return one half of the community income. Community income under

the Idaho law includes income from the separate property of the spouses.

Here we find petitioner repudiating and disowning an established administrative construction and practice of long standing insofar as it applies to Oklahoma. This petitioner has done despite repeated Congressional refusals to modify the income tax law by incorporating therein a provision specifically dealing with the relation of the community property system to the income tax. Petitioner says the issue was not considered by this Court in *Hopkins v. Bacon*, thereby inferring that the Court did not know what it was deciding.

The petitioner in this proceeding is airing his grievance against the income tax effect of the community property system. He has chosen the wrong forum. Let him again go to the Congress. This is exactly what this Court suggested not so long ago in another situation involving the revenue laws in its decision in *United States v. Nunnally Investment Company*, 316 U. S. 258 (1942), where it said, (p. 264):

*** The problem of legal remedies appropriate for fiscal administration rests within easy Congressional control. Congress can deal with the matter comprehensively, unembarrassed by the limitations of a litigation involving only one phase of a complex problem***. If the doctrine of the *Sage Case* is now to be abandoned, such a determination of policy in the administration of the income tax law should be made by Congress, which maintains a Joint Committee on Internal Revenue Taxation charged with the duty of investigating the operation of the Federal revenue laws and recommending such legislation as may be deemed desirable.

For the foregoing reasons it is clear that the cases of *Helvering v. Clifford*, *supra*, *Burnet v. Lininger*, *supra*, *Helvering v. Horst*, *supra*, *Harrison v. Schaffner*, *supra*, and *Helvering v. Stuart*, *supra*, are wholly inapplicable to the instant proceeding.

III

Petitioner, on pages 23-26 of his brief, refers to the motive prompting the enactment of the Oklahoma law, asserting that it was to give Oklahomans Federal income tax advantage. In other parts of his brief he makes sly references to an income tax reduction, even hooking a phrase of this import onto his statement of the question presented, petitioner's brief page 2. In passing it is also noted that the dissenting opinion below contains the statement (R. 83):

It stands admitted that the purpose of the passage of the law was to make available to citizens of Oklahoma the benefits of the community property law for income tax purposes.

This statement is without foundation in the record. Neither are petitioner's assertions supported by anything in the record. It in fact contains no proof of the alleged motive or purpose.

The motive and purpose of the State of Oklahoma, acting through its Legislature in enacting its community property law, are immaterial. Regardless of whether the motive was to prevent the flow of capital from Oklahoma, or to regenerate the world, it has no bearing whatever upon the legal rights flowing from the action taken.

This Court has heretofore decided that it will concern itself only with the legal rights created by state law

(40)

and the resulting consequences, and that it will not inquire into the motives actuating the exercise of legislative capacity. '

(1) *Pacific Company v. Johnson*, 285 U.S. 480.

CONCLUSION

The decision of the Court below should be affirmed.

Respectfully submitted,

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Dated: October 6, 1944

APPENDIX

APPENDIX A

STATUTES

REVENUE ACT OF 1938:

Subtitle B — General Provisions

Part I — Rates of Tax

Sec. 11. — Normal Tax on individuals.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25: (52 Stat. at L. 452).

Sec. 12. Surtax on individuals.

* * * * *

(b) RATES OF SURTAX. — There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows: * * *

* * * * *

(52 Stat. at L. 453)

Sec. 22. Gross income.

(a) GENERAL DEFINITION. — "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the

transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(52 Stat. at L. 457)

Oklahoma Statutes Annotated (1941), Title 68,
Chapter 21 —

Income Tax:

Sec. 874. Definition of terms used —

For the purpose of, and when used in this Act:

(b) The term "person" means an individual, a trust or estate, a partnership or a corporation.

Sec. 876. Levy of Tax-Income subject to Tax-Rates of taxation.

(a) A tax is hereby levied upon every person as defined in Section 4(b), which tax shall be collected and paid, for each taxable year, upon, and with respect to, the entire net income of such person, which is derived from all property owned and/or business transacted within this State. And a like tax is hereby levied upon every person as defined in Section 4 (b), which tax shall be collected and paid for each taxable year, upon, and with respect to, the entire net income of such person which is derived from all property owned partly within and partly without this State and/or business done partly within and partly without this State (commonly known as inter-state business), such income derived from property owned partly within and partly without this State and/or business transacted partly within and partly with-

out this State, upon which said tax is hereby levied, to be determined or allocated under the formula as formulae as provided in Section⁸ of this Act.² Every resident individual shall likewise be subject to the tax hereby levied upon the entire net income of such individual, derived from wages, salaries, commissions, professional or occupational earnings or other compensation received from personal services.

Sec. 878. Gross income — What included —
What not included —

Allocation of income and losses — Income of
those conducting business for benefit of others—

Controlled and affiliated companies.

The term "gross income", except as otherwise provided in subsection (c) of this Section.

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service, including personal service as an officer or employee of the United States, or any State, or any political subdivision thereof, whether in the legislative, executive or judicial branch of the government thereof, or any agency or instrumentality of any one more of the foregoing, of whatever kind and in whatever from paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit; also amounts received by a taxpayer from life insurance policies upon the life of any of its officers or employees in excess of the aggregate premiums or

consideration paid for such policies; and also gains or profits and income derived from any source whatever: * * *

Oklahoma Statutes Annotated (1941). Title 32. Community Property:

Title of Act:

An Act making provisions for community property law; providing that the act shall apply to husbands and wives and their property subsequent to the first day of any month after the filing of an election to come under its terms; providing that the act shall cease to apply to husbands and wives and their property upon the death of one of them or upon a decree of divorce being rendered; defining the separate property and the community property of the husband and wife; providing for the management, control and disposition thereof and the rights and remedies of creditors in relation thereto; providing that either spouse may give or convey his or her interest in community property to the other; providing for disposition of the community property on dissolution of the marriage; providing for the substitution of one spouse under certain conditions for the other through legal proceedings in the management, control and disposition of community property; providing for the administration and distribution of the interest of a deceased spouse in community property. Laws 1939, p. 356.

Sec. 51. Community property law — Election to come under act.

This Act shall be available only to and apply only to husbands and wives and to their property for a period of time from the first day of the month in any year subsequent to their filing their written election to come under the terms of this Act until either an absolute decree of divorce is rendered dissolving their marriage, or until the death of one of them. Laws 1939, p. 356.

ANNOTATIONS

1/2. Construction and application.

Husband and wife, who filed written election to come under provisions of this act, were entitled to file separate income tax returns and divide the community income. *Commissioner of Internal Revenue v. Harmon*, C. C. A., 139 F. (2d) 211; certiorari granted 64 S. Ct. 848, 88 L. Ed. —.

The fact that this act is elective does not differentiate it from other community property statutes as respects the rights of husband and wife to file separate income tax returns in which each may return one-half of the community. *Id.*

As long as the wife under this act has a present vested interest in community property equal to that of her husband, the spouses are entitled to file separate returns, each treating one-half of the community income as income of each of them as an individual. *Id.*

Under this act, both husband and wife have management, control, and disposition of a portion of the community property, but this power is exercised by the spouses, respectively, not as owner but as agents of the community created by law. *Id.*

Under this act, that part of the community property record, title to which is under the husband's name or under his management, control, and disposition, is subject to his debts. *Id.*

That the purpose of this act was to give residents of state federal income tax advantages over citizens of other states could not be considered by Circuit Court of Appeals, which was only concerned with the legal right created by the statute and the consequences flowing therefrom. *Id.*

1. Validity.

Const. art. 2, § 15, prohibiting passage of laws "impairing obligation of contracts," is not violated by Community property Act, which expressly recognizes continuance of pre-existing property and contractual rights and obligations and has no effect until after filing of spouses' election, therein provided for, to come under terms of act. *Harmon v. Oklahoma Tax Commission*, 189 Okl. 475, 148 P. (2d) 205.

The Community Property Act does not violate constitutional provision that act shall embrace but one subject clearly expressed in title. *Id.*

Const. art. 5, § 46, is not violated by Community Property Act, which has state-wide application, is available to each married citizen of state, and does not change law of descent or distribution. *Id.*

Const. art. 2, § 7, providing that no person shall be deprived of property without "due process of law" is not violated by act depriving person of property or affecting his property rights only by his own consent, as in case of Community Property Act, which applies only to property of spouses filing written election to come under terms of act. *Id.*

Const. art. 2, § 23, providing that no private property shall be taken or damaged for private use without owner's consent is not violated by act providing for specific consent, expressed in specified manner, before it affects private property, as in case of Community Property Act, which applies only to property of spouses filing written election to come under terms of act. *Id.*

The Community Property Act is not unconstitutional as invading citizens' rights to enjoyment of gains of their own industry, as it has no effect on any such right unless citizen expressly elects to come under its terms. *Id.*

Sec. 52. Election to come under act. form of —
Filing.

The written election to come under the terms of this Act, referred to in Section 1 of this Act, shall be a written instrument signed and acknowledged in duplicate by both husband and wife, stating in substance that they desire to avail themselves of the Act and have same apply to them and to their property on the first day of the next month in any year subsequent to the filing thereof in both the office of the county clerk and the Secretary of State as hereinafter provided. Acknowledgments shall be in the form, and may be taken before any officer now prescribed by law for acknowledgments to conveyances of real estate. One of the said written instruments shall be filed in the office of the county clerk of the county of the residence of the signers thereof, and one in the office of the Secretary of State. The county clerks and the Secretary of State shall cause all such instruments to be recorded in records kept for that purpose, and to be properly indexed. Laws 1939, p. 356, § 2.

Sec. 53. Husband's separate property.

All property, both real and personal, of the husband owned or claimed by him before the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the wife's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be his separate property. The separate property of the husband shall not

be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act. Laws 1939, p. 356, § 3.

ANNOTATIONS

1. Construction and application.

As oil and gas lease is "property", profits derived by husband from sale of oil and gas lease, owned by him before effective date of his election, made after such sale, to come under terms of Community Property Act, constitute his separate "income" and should be so considered in computing amount of income taxes due state from him. *Harmon v. Oklahoma Tax Commission*, 189 Okla. 475, 118 P. (2d) 205.

Sec. 54 Wife's separate property.

All property, both real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective

(1) Section 51 of this title.

date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act. Laws 1939, p. 357, § 4.

Sec. 55. Compensation for injuries as separate property.

All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries. Laws 1939, p. 357, § 5.

Sec. 56. Property deemed community or common property — Control — Bank deposits.

All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each, subject to the provisions of this Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property,

(1) Section 54 of this title

(2) Obviously this should be "from" and not "for"

shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this Act, and further provided, that any funds on deposit in any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account Laws 1939, p. 357, § 6.

ANNOTATIONS

1. Construction and application.

Income derived by husband from sale of oil and gas from producing leases owned and operated by him after effective date of his election to come under terms of Community Property Act does not enhance value of corpus of his separate realty, but is "community or common property of the husband and the wife" and should be so treated in estimating amount of income taxes due state from them. *Harmon v. Oklahoma Tax Commission*, 189 Okla. 475, 188 P. (2d) 205.

Sec. 57. Property as subject to debts or liabilities of spouses.— Exemptions.

The separate property of the wife and that portion of community property, record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not to debts or liabilities of the husband. The separate property of the husband and that portion of the community property, record title to which is in his name or

which is under the management control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. The husband and the wife, and each of them, shall be entitled to the exemptions to which they, or either of them, are now entitled under the laws existing prior to the enactment of this Act. Laws 1939, p. 358. § 7.

Sec. 58. Creditors' rights in community property.

No creditor shall have recourse to the community property for the payment of debts or liabilities created by either the husband or the wife, except as provided in Section 7 of this Act, provided, however, that any creditor may satisfy his claim or demand out of the community property which was under the management, control and disposition of the spouse incurring the indebtedness or liability at the time the debt or liability was contracted or created, and which has been subsequently conveyed or transferred to the other spouse and is under the management, control and disposition of said other spouse, without proof that said creditor relied upon said community property in advancing said credit, but without prejudice to the rights of the third party purchasers, incumbrances, or other creditors or grantees; and provided further, that the husband or wife on paying community debts shall, as between themselves, charge the same against community property. Laws 1939, p. 358. § 8.

Sec. 59. Conveyances between spouses, of community property — Creditors' rights not affected.

The husband may give, grant, bargain, sell or con-

vey directly to his wife, and a wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any property of their community real or personal property. Every deed and conveyance made from the husband to the wife or from the wife to the husband shall operate to divest the property therein described of every claim or demand as community property, and shall vest the same in the grantee as the separate property of the grantee; provided, however, that the deeds conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or encumbrance. Laws 1939, p. 358 § 9.

Sec. 60. Dissolution of marriage — Division of community property.

In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as such court, from the facts in the case, shall deem just and equitable and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below. Laws 1939, p. 359, § 1.

Sec. 61. Incapacity of spouse — Conviction — Abandonment — Habitual drunkard — Substitution of other spouse.

Whenever the husband or the wife is non compos mentis, or has been convicted of a felony or sentenced to imprisonment for a period of more than one year, or whenever the husband has abandoned his wife and family and left her and his family, if they have children, without support, or whenever the husband or the wife is an habitual drunkard, or for any other reason is in

capacitated to manage, control, or dispose of the community property, the other spouse may present a petition, duly verified, to the district court of the county wherein they reside, or if they are non-residents wherein any of the name of the incapacitated spouse, a description of all community property, both real and personal, and the facts which render the other spouse incapacitated to manage, control or dispose of the community property, and praying that the spouse filing the petition be substituted for the incapacitated spouse as to the management, control or disposition of the community property then under the management, control and disposition of said spouse with the same power of managing controlling and disposing of the community property as was vested in the incapacitated spouse. Laws 1939, p. 359 § 11.

Sec. 62. Service of process in proceedings for substitution of spouse.

In all such cases service of process shall be had as in other civil actions, provided, however, that where it is alleged that the other spouse is non-composmentis, a guardian *ad litem* shall be appointed having such powers as in other civil actions. Laws 1939, p. 359, § 12.

Sec. 63. Hearing on petition for substitution — Judgment.

Upon the hearing of the petition so filed, the court shall render judgment thereon either dismissing said petition or adjudging the spouse filing same to have such power of managing, controlling and disposing of the community property, either real or personal, formerly under the management, control and disposition of the other spouse as to the court may appear to be just, proper, equitable, and to the best interests of said estate. Laws 1939, p. 359, § 13.

Sec. 64. Recording of judgment in proceeding for substitution.

All judgments rendered as in the preceding Section provided shall be recorded in the office of the county clerk of the county where any property affected thereby is situated and such judgment when so rendered shall be notice of the facts therein set out. Laws 1939, p. 360, § 14.

Sec. 65. Death of spouse — Administration of community property — Interest of survivor — Homestead.

Upon the death of the husband or the wife, the surviving spouse shall administer all community property in the same manner and with the same duties, privileges and authority as are vested in a surviving partner to administer and settle the affairs of a partnership upon the death of the other partner, as provided by Section 1197, Oklahoma Statutes, 1931¹ provided that the surviving husband or wife shall not be disqualified from acting as executor or administrator of the estate of the deceased husband or wife, and provided further, that the survivor of the husband or wife shall pay out of the community property, except the homestead and exempt property, all debts of the community, whether created by the husband or the wife, and provided further, that when all debts of the community shall have been fully satisfied the survivor shall transfer and convey to the administrator or executor of the deceased one-half of the community property remaining to be administered and distributed as other property of the estate either subject to the terms of the will of the deceased or under the laws of descent and distribution as the case may be, and thereafter all the interest of the surviving partner in said

¹ Section 255 of Title 58, Probate Procedure.

(55)

community property shall be that of a tenant in common; and provided further, that any interest in a homestead so conveyed shall not be subject to administration under the laws of this State, except in the manner provided by law at the time of the enactment of this Act. Laws 1939, p. 360, § 15.

APPENDIX B

LEGISLATIVE HISTORY

Revenue Act of 1921. (42 Stat. at L. 227):

The Treasury Department suggested to the Congress the insertion of the following provision:

Income received by any community shall be included in the gross income of the spouse having management and control of the community property.

In the Revenue Act of 1921. This clause was included in that Act as passed by the House. It was removed by the Senate.

Revenue Act of 1924. (43 Stat. at L. 253)

The Treasury Department again suggested to the Congress that the above provision be included in the Revenue Act of 1924. It was omitted from that Act by the House Ways and Means Committee, and was not thereafter reinstated.

Revenue Act of 1926. (44 Stat. at L. 9)

In its argument in *Poe v. Seaborn*, 282 U. S. 101. (1930) the Government contended that Congress had included in the Revenue Act of 1926, Sec. 1212, reading as follows:

Income from any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the state law applicable.

to such martial community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse.

with the intention of leaving the question of the taxability of community income open for the future in states other than California; while closing it for all prior years. In *Poe v. Seaborn*, *supra*, the Court declined to attribute the Congressional intent ascribed to it by the Government, stating that, p. 115:

"* * * We think that although Congress had twice refused to change the wording of the act, so as to tax community income to the husband in Washington and certain other states, in view of our decision in *United States v. Robbins*, 269 U. S. 315, 70 L. ed. 285, 46 S. Ct. 148, it felt we might overturn the executive construction and assimilate the situation in Washington to that we had determined existed in California. Section 1212 therefore was merely inserted to prevent the serious situation as to resettlements, additional assessments and refunds which would follow such a decision."

In the argument which it made in *Poe v. Seaborn*, *supra*, the Government also relied on Joint Resolution No. 88, 71st Congress, reading as follows, (46 Stat. at L. 589):

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled: That the three-year period of limitation provided in section 277 of the Revenue Act of 1926 upon the assessment of in-

come taxes imposed by that Act for the taxable year 1927, and the three-year period of limitation provided in section 284 of the Revenue Act of 1926 in respect of refunds and credits of income taxes imposed by that Act for the taxable year 1927 shall be extended for a period of one year in the case of any married individual where such individual or his or her spouse filed a separate income-tax return for such taxable year and included therein income which under the laws of the State upon receipt became community property.

Sec. 2. The two-year period of limitation provided in section 275 of the Revenue Act of 1928 upon the assessment of income taxes imposed by Title I of that Act for the taxable year 1928, and the two-year period of limitation provided in section 322 of the Revenue Act of 1928 in respect of refunds and credits of income taxes imposed by that Act for the taxable year 1928 shall be extended for a period of one year in the case of any married individual where such individual or his or her spouse filed a separate income-tax return for such taxable year and included therein income which under the laws of the State upon receipt became community property.

Sec. 3. The periods of limitations extended by this joint resolution shall, as so extended, be considered to be provided in sections 277 and 284 of the Revenue Act of 1926 and sections 275 and 322 of the Revenue Act of 1928, respectively.

Sec. 4. Nothing herein shall be construed as extending any period of limitation which has ex-

pired before the enactment of this joint resolution."

The Court, discussing the above Joint Resolution in its opinion in *Poe v. Seaborn*, *supra*, said, p. 116:

"It is obvious that this resolution was intended to save the government's right of resettlement, in event that the proposed test suits, of which this is one, should be decided in favor of the government's present contention. See the report of the Ways and Means Committee on the resolution (Cong. Record, June 11, 1930, pp. 10, 923-10, 925)."

Revenue Act of 1941. (55 Stat. at L. 687).

The Revenue Act of 1941, as approved by the House Ways and Means Committee, and introduced on the floor of the House, contained a provision designed to specifically deal with the relation of community property systems to the income tax. This proposed provision required a husband and wife living together at any time during a taxable year to report their aggregate income from all sources in a single joint return, and compute their income tax and their surtax on this basis. This provision was defeated on the floor of the House.

The House Ways and Means Committee, Report No. 1040, 77th Congress, 1st Session, contains an extended discussion favoring the constitutionality of this proposed provision:

After the Revenue Act of 1941 had passed the House, the Senate Finance Committee proposed a provision designed to specifically deal with the relation of community property systems to the income tax. This provision would have taxed income earned by each spouse, irrespective of whether or not treated as community

property under state law, to the earner of such income; income from community property would have been taxed to the spouse having management and control under state law; and in the event spouses elected to file separate returns of income, the deductions and credits to which each spouse would have been entitled would have been allocated to the income taxed to each spouse. This proposal was also defeated.

The unconstitutional aspects of this proposal of the Senate Finance Committee are discussed in the report of the Senate Finance Committee, 77th Congress, 1st Session, Calendar No. 703, Report No. 673, Part 2.

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APPENDIX C

OKLAHOMA TAX COMMISSION ORDER NO. 9513

Filed with Oklahoma Tax Commission, July 30, 1940.

(Signed) L. E. Ruble, Secretary:
Assistant.

BEFORE THE OKLAHOMA TAX COMMISSION

In the Matter of the Income Tax Liability of C. C.

Harmon for the Calendar Year 1939

Case No. 1076.

ORDER NO. 9513.

BE IT REMEMBERED that on this 26 day of July, 1940, there came on for hearing before the Oklahoma Tax Commission the protest of the above named taxpayer in which said taxpayer protests an additional assessment of income tax for the calendar year 1939 made against him by the Oklahoma Tax Commission; said taxpayer appeared by his attorney, Roger S. Randolph, and the Oklahoma Tax Commission appeared by its attorney, E. M. Dudley; after considering the written protest of said taxpayer, and all of the testimony offered in evidence, and being well and sufficiently informed in the premises, the Oklahoma Tax Commission finds:

That on October 26, 1939, C. C. Harmon, the taxpayer and his wife, Pearl M. Harmon, in the manner authorized by law, elected to and did bring themselves on and after November 1, 1939, within the provisions of the Community Property Law (Article 2, Chapter 66, Session Laws of Oklahoma, 1939); that said tax-

payer from November 1st, 1939, to December 31st, 1939, inclusive, receiving the following income:

Salary for November and December from Harmon & Whitehill, an Oklahoma corporation, of which C. C. Harmon was president

\$ 3,333.34

Cash dividends upon stocks acquired by C. C. Harmon in his name before November 1, 1939, with his separate funds:

Phillips Petroleum Company 140.00

Standard Oil Company of Indiana 100.00

Pure Oil Company 50.00

Louisiana Land & Exploration Co. 50.00

Harmon & Whitehill, Inc. 9,780.00

Atlantic Refining Company 50.00

Consolidated Oil Corporation 80.00

Interest upon promissory notes and certificates of deposit acquired by C. C. Harmon with his separate funds before November 1, 1939

472.50

Distributive shares of C. C. Harmon in November and December, 1939, net income of the following co-partnerships:

Atlas Oil Company 425.42

Cowdery & Harmon 394.62

C. C. Harmon acquired his interests in these co-partnerships with his separate funds before November 1, 1939.

Cash from sales of oil and gas from Oklahoma oil and gas royalties after deducting gross production taxes and 20% depletion. These royalty interests were acquired by C. C. Harmon in his name with his separate funds before November 1, 1939. The deeds under which he acquired title include general warranty

| | |
|--|----------|
| deeds, mineral deeds and conveyances of oil and gas rights | 1,303.32 |
|--|----------|

| | |
|---|-----------|
| Cash from sales of oil and gas from Oklahoma oil and gas leases after deducting operating expenses, depreciation, and depletion. These leases were acquired by C. C. Harmon in his name with his separate funds before November 1, 1939 | 11,487.38 |
|---|-----------|

| | |
|---|--------|
| Profit from sale of nonproducing oil and gas lease to Carter Oil Company, less cost of lease. This lease was acquired by C. C. Harmon in his name with his separate funds before November 1, 1939 | 176.75 |
|---|--------|

| | |
|--------------|-------------|
| TOTAL INCOME | \$27,843.33 |
|--------------|-------------|

That said taxpayer made his Oklahoma Income Tax Return for the calendar year 1939 on the cash basis, and in said return, which was filed with the Oklahoma Tax Commission in the time required by law, said taxpayer reported as gross income for November and December, 1939, only \$13,833.29, said amount being one-half of his total income for November and December, 1939, less one-half of the profit of \$88.38, derived from the sale of an oil and gas lease which was erroneously excluded from said return, and in said return he also reported as income \$6,007.58, representing one-half of the net income of Pearl M. Harmon, his wife, during November and December, 1939; that from November 1, 1939 to December 31, 1939, inclusive, taxpayer made the following cash disbursements from his separate funds:

| | |
|---|-------------------|
| Contributions to Boy Scouts of America and American Red Cross | \$ 30.00 |
| Income tax payment to Collector of Internal Revenue for last quarter, 1938 | |
| Federal income tax of C. C. Harmon | 505.10 |
| Ad valorem tax payment to County Treasurer of Nowata County, Oklahoma, for first half of Nowata County 1939 ad valorem taxes on certain Nowata County real estate | 106.30 |
| Gasoline, oil, and other items on field car owned by C. C. Harmon and used by him in his business | 175.36 |
| Traveling expenses | 160.24 |
| Salaries, rent, and other items at office of C. C. Harmon in Nowata, Oklahoma | 576.74 |
| TOTAL DISBURSEMENTS | \$1,553.74 |

That in addition to these cash disbursements said taxpayer sustained, during November and December, 1939, depreciation in the amount of \$177.64 on business automobiles owned by him, and depreciation in the amount of \$9.32 on office furniture and fixtures owned by him; that in his said 1939 income tax return said taxpayer claimed as deductions \$870.36 which represents one-half of the total cash disbursements made by him, as aforesaid, during November and December, 1939, and one-half of the depreciation of \$186.96 sustained by him, as aforesaid, during November and December 1939, upon business automobiles, furniture and fixtures.

That the Income Tax Division of the Oklahoma Tax Commission examined said taxpayer's 1939 income tax return after the same was filed with said Com-

mission, and after having examined the same said Commission, in a letter dated May 9, 1940, notified said taxpayer that an additional tax of \$677.40, together with interest to May 15, 1940, of \$6.77, was being assessed against him as additional 1939 income tax by reason of the following adjustments which were set forth in said letter:

| | |
|---|----------|
| Addition to income of one-half of profit on sale of lease | \$ 88.38 |
|---|----------|

| | |
|---|-----------|
| Addition to income of one-half of November and December, 1939, net income of C. C. Harmon per Exhibit "B" | 13,051.31 |
|---|-----------|

| | |
|--|--------|
| Addition to income because of adjustment in partnership income of Cowdery & Harmon | 394.63 |
|--|--------|

| | |
|---|----------|
| Deduction from income of one-half of net income of Pearl M. Harmon during November and December, 1939 | 6,007.58 |
|---|----------|

That on June 5, 1940, said taxpayer filed with the Oklahoma Tax Commission his written protest, under oath, dated June 4, 1940, that said protest was to the assessment of additional 1939 income tax, of which said taxpayer was notified in said Commission's letter dated May 9, 1940.

The Commission further finds that said taxpayer's protest should be and the same is hereby sustained in respect to the following items:

| | |
|--|-------------|
| Salary for November and December from Harmon & Whitehill, an Oklahoma corporation, of which C. C. Harmon was president | \$ 3,333.34 |
|--|-------------|

Cash dividends upon stocks acquired by C. C. Harmon in his name before November 1, 1939, with his separate funds:

| | |
|----------------------------------|----------|
| Phillips Petroleum Company | 140.00 |
| Standard Oil Company of Indiana | 100.00 |
| Pure Oil Company | 50.00 |
| Louisiana Land & Exploration Co. | 50.00 |
| Harmon & Whitehill, Inc. | 9,780.00 |
| Atlantic Refining Company | 50.00 |
| Consolidated Oil Corporation | 80.00 |

Interest upon promissory notes and certificates of deposit acquired by C. C. Harmon with his separate funds before November 1, 1939

472.50

Distributive shares of C. C. Harmon in November and December, 1939, net income of the following co-partnerships:

| | |
|-------------------|--------|
| Atlas Oil Company | 425.42 |
| Cowdery & Harmon | 394.62 |

C. C. Harmon acquired his interests in these co-partnerships with his separate funds before November 1, 1939.

and that said protest be, and the same is hereby denied in respect to the following items:

Cash from sales of oil and gas from Oklahoma oil and gas royalties after deducting gross production taxes and 20% depletion. These royalty interests were acquired by C. C. Harmon in his name with his separate funds before November 1, 1939. The deeds under which he acquired title include general warranty deeds, mineral deeds, and conveyances of oil and gas rights.

\$ 1,303.32

(67)

Cash from sales of oil and gas from Oklahoma oil and gas leases after deducting operation expense, depreciation and depletion. These leases were acquired by C. C. Harmon in his name with his separate funds before November 1, 1939

11,487.38

Profit from sale of nonproducing oil and gas lease to Carter Oil Company, less cost of lease. This lease was acquired by C. C. Harmon in his name with his separate funds before November 1, 1939

176.75

and that said taxpayer should be assessed an additional income tax for the calendar year 1939 of \$500.40, together with interest thereon in the amount of \$13.76.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said taxpayer, C. C. Harmon, be, and he hereby is assessed an additional income tax for the calendar year 1939 in the amount of \$500.40, together with interest thereon in the amount of \$13.76, and it is so ordered.

OKLAHOMA TAX COMMISSION.

(Signed) J. D. Carmichael, Chairman:

(Signed) J. D. Dunn, Vice-Chairman:

(Signed) Hubert L. Bolen, Member.

Attest:

(Signed) L. E. Ruble, Secretary (Seal);

Approved as to Form:

(Signed) F. M. Dudley, Attorney.

APPENDIX D

COMMUNITY PROPERTY LAWS OF OKLAHOMA
AND OTHER STATES

OKLAHOMA:

Sec. 53. Husband's separate property. All property, both real and personal, of the husband, owned or claimed by him before the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act,¹ and that acquired afterwards by gift, including gifts of the wife's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act. Laws 1939, p. 356, § 3.

TEXAS:

Art. 4613. — Vernon's Texas Statutes (1936) — HUSBAND'S SEPARATE PROPERTY. — All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessities furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control, and disposition of his separate property, both real and personal. (Const. art. 16, § 15; Acts 1948, p. 77, G. L. vol. 3, p. 77; Acts 1943, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1929, 41st Leg., p. 66, ch. 32, § 1.)

TEXAS:

Sec. 54. Wife's separate property. All property, both

Art. 4614. — Vernon's Texas Statutes (1936) — WIFE'S

(1) Section 51 of this title

real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act. Laws 1939, p. 357, § 4.

SEPARATE PROPERTY.—

All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, as also the increase of all lands thus acquired, shall be the separate property of the wife. The wife shall have the sole management, control, and disposition of her separate property, both real and personal, provided, however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands; and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law. (Const. art. 16, § 15; Acts 1848, p. 77; G. L. vol. 3, p. 77; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251; Acts 1929, 41st Leg. p. 66, ch. 32, § 1.)

Art. 4616 — Vernon's Texas Statutes (1936) —

WIFE'S SEPARATE PROPERTY PROTECTED —

neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband. Acts

1848, p. 77; G. L. vol. 3, p. 77; Const., Art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.)

TEXAS:

"Sec. 55 Compensation for injuries as separate property. All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries. Laws 1939, p. 357, § 5."

Art. 4615 — Vernon's Texas Statutes (1936) — **COMPENSATION FOR PERSONAL INJURIES TO WIFE** — All property or moneys received as compensation for personal injuries sustained by the wife shall be her separate property, except such actual and necessary expenses as may have accumulated against the husband for hospital fees, medical bills and all other expenses incident to the collection of said compensation. (Acts 1915, p. 103.)

TEXAS:

"Sec. 56 Property Deemed Community or Common Property. ~~Control~~—Bank deposits. All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each subject to the provisions of this Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the com-

Art. 4619, Vernon's Texas Statutes (1936) — **COMMUNITY PROPERTY** — Sec. 1. All property acquired by either the husband or wife, during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife, and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the husband only; pro-

munity property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property, shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this Act, and further provided, that any funds on deposit in any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. Laws 1939, p. 357, § 6.

vided, however, if the husband shall have disappeared and his whereabouts shall have been and remain unknown to the wife continuously for more than twelve months, the wife shall after such twelve month period and until the husband returns to her and the affidavit herein after provided for is made and filed for record, have full control, management and disposition of the community property; and shall have the same powers with reference thereto as are conferred by law upon the husband, and her acts shall be as those of a feme sole. * * * (Acts 1840, p. 3; G. L. vol. 2, p. 177; Acts 1913, p. 61; Acts 1927, 40th Leg. p. 219, ch. 148.)

Art. 4622, Vernon's Texas Statutes (1936)—FUNDS IN BANK—Funds on deposit in any bank or banking institution, whether in the name of the husband or wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. (P. D. 4642; Acts 1913, p. 61.)

IDAHO

Arts. 31-913, 31-914, Idaho Code Ann. (1932). The husband has the management

(1) Obviously this should be from and not for.

and control of the community property, except the earnings of the wife for her personal services and the rents and profits of her separate estate. * * * The wife has the management and control of the earnings for her personal services, and the rents and profits of her separate estate.

Note: In Idaho, as in Oklahoma, the income from the separate property of each spouse is community property. Nevada and Washington, like Oklahoma and Idaho, divide the management and control of community property between the spouses. See Sec. 3360, Nevada Compiled Laws 1929; Sec. 6895, Remington's Revised Statutes (Washington) 1932.

TEXAS

Sec. 57. Property as Subject to Debts or Liabilities of Spouses—Exemptions. The separate property of the wife and that portion of community property, record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not to debts or liabilities of the husband. The separate property of the husband and that portion of the community property, record title to which is in his name or which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or

Art. 4613—Vernon's Texas Statutes (1936) — HUSBAND'S SEPARATE PROPERTY — All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessities furnished herself and children after her marriage with him, nor for debts of the wife. During marriage the husband shall have the sole management, control and disposition of his

liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. The husband and the wife, and each of them, shall be entitled to the exemptions to which they or either of them, are now entitled under the laws existing prior to the enactment of this Act. Laws 1939, p. 358, § 7.

Sec. 58. Creditors' Right in Community Property. No creditor shall have recourse to the community property for the payment of debts or liabilities created by either the husband or the wife, except as provided in Section 7 of this Act, provided, however, that any creditor may satisfy his claim or demand out of the community property which was under the management, control and disposition of the spouse incurring the indebtedness or liability at the time the debt or liability was contracted or created; and which has been subsequently conveyed or transferred to the other spouse and is under the management, control and disposition of said other spouse, without proof that said creditor relied upon said community property in advancing said credit, but without prejudice to the rights of the third party purchasers, incumbrancers, or other creditors, or grantees; and provided further, that the husband or wife on paying community debts, shall, as between themselves, charge

separate property, both real and personal. (Const. art. 16 § 15. Acts, 1848, p. 77. G. L. vol. 3, p. 77. Acts, 1913, p. 61. Acts 1917, p. 436. Acts 1921, p. 251. Acts 1929 41st Leg. p. 66 ch. 32 § 1.)

Art. 4616—Vernon Texas Statutes (1936). — **WIFE'S SEPARATE PROPERTY PROTECTED.** Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of debts of the husband. (Acts 1848, p. 77. G. L. vol. 3, p. 77. Const. Art. 16, sec. 15. Acts 1913, p. 61. Acts 1917, p. 436. Acts 1921, p. 251.)

Art. 4619—Vernon's Texas Statutes (1936). — **Community Property.**—Sec. 1. All property acquired by either the husband or wife, during marriage except that which is the separate property of either, shall be deemed the common property of the husband and wife; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the husband

the same against community property. Laws 1939, p. 358, § 8.

Sec. 59. Conveyances between spouses of community property — Creditors' rights not affected. The husband may give, grant, bargain, sell or convey directly to his wife, and a wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any property of their community real or personal property. Every deed and conveyance made from the husband to the wife, or from the wife to the husband shall operate to divest the property therein described of every claim or demand as community property, and shall vest the same in the grantee as the separate property of the grantee; provided, however, that the deeds conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or encumbrance. Laws, 1939, p. 358 § 9.

only; provided, however, if the husband shall have disappeared and his whereabouts shall have been and remain unknown to the wife continuously for more than twelve months, the wife shall after such twelve month period and until the husband returns to her and the affidavit hereinafter provided for is made and filed for record, have full control, management and disposition of the community property, and shall have the same powers with reference thereto as are conferred by law upon the husband, and her acts shall be as those of a feme sole. * * *

(Acts 1840; p. 3; G. L. vol. 2, p. 177; Acts 1913, p. 61; Acts 1927, 40th Leg. p. 219, ch. 148)

Art. 4620—Vernon's Texas Statutes (1936) — **COMMUNITY PROPERTY LIABLE FOR DEBTS.** The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. (Acts 1856, p. 51; G. L. vol. 4, p. 469; P. D. 4646).

Art. 4621—Vernon's Texas Statutes (1936) — **COMMUNITY PROPERTY NOT LIABLE.** — The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessities furnished herself and children, unless the husband joins in the execution of the contract — provided, that her rights with reference to the community property on permanent abandonment by the husband

shall not be affected by this provision."

Art. 4623—Vernon's Texas Statutes (1936)—*Subject to Debts of Wife*—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessities furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation or another without the joinder of her husband with her in making such contract. (Id. Acts 1848, p. 77; G. L. vol. 3, p. 77).

TEXAS:

Sec. 60. Dissolution of Marriage—Division of Community Property. In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as such court, from the facts in the case, shall deem just and equitable, and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below. Laws 1939, p. 359, § 10.

Art. 4638—Vernon's Statutes (1936)—*Division of Property*—The court pronouncing a decree of divorce shall also decree and order a division of the estate of the parties in such a way as the court shall deem just and right, having due regard to the rights of each party and their children, if any. Nothing herein shall be construed to compel either party to divest himself or herself of the title to real estate. (P. D. 3452).

WASHINGTON:

Sec. 989—Remington's Revised Statutes, Washington (1932)—In granting a divorce, the court shall also make such disposition of the property of

the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the conditions in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage."

NEW MEXICO

Sec. 61. Incapacity of spouse.
—Conviction — Abandonment
— Habitual Drunkard — Substitution of Other Spouse. When

ever the husband or the wife is non compos mentis, or has been convicted of a felony or sentenced to imprisonment for a period of more than one year, or whenever the husband has abandoned his wife and family and left her and his family, if they have children, without support, or whenever the husband or the wife is an habitual drunkard, or for any other reason is incapacitated to manage, control, or dispose of the community property, the other spouse may present a petition, duly verified, to the district court of the county wherein they reside, or if they are non residents wherein any of the community property is located or situated, stating the name of the incapacitated spouse, a description of all community property, both real and personal, and the facts which render

Sec. 68. 404. — New Mexico Statutes Annotated, (1929) —

Whenever the husband is non compos mentis or has been convicted of a felony and sentenced to imprisonment for a period of more than one year or has abandoned his wife and family and left her and his family, if they have children, without support or is an habitual drunkard or for any other reason is incapacitated to manage and administer the community property, the wife may present a petition duly verified to the district court of the county wherein any of the community property the wife may present a petition duly verified to the district court of the county wherein any of the community property is located or situated, stating the name of her husband, a description of all community property, both real and personal, and the facts which render him incapacitated to manage and administer the community property and praying that she be substituted for her husband as the

the other spouse incapacitated to manage, control or dispose of the community property, and praying that the spouse filing the petition be substituted for the incapacitated spouse as to the management, control or disposition of the community property then under the management, control and disposition of said spouse with the same power of managing, controlling and disposing of the community property as was vested in the incapacitated spouse. Laws 1939, p. 359, § 11."

head of said community, with the same power of managing, administering and disposing of the community property, as is vested in the husband by this chapter."

NEW MEXICO

"Sec. 62. Service of Process in Proceedings for Substitution of Spouse. In all such cases service of process shall be had as in other civil actions, provided, however, that where it is alleged that the other spouse is non compos mentis, a guardian ad litem shall be appointed having such powers as in other civil action. Laws 1939, p. 359, § 12."

Sec. 68.405—New Mexico Statutes Annotated (1929)—If it appears from said petition that the husband is non compos mentis the action shall not be prosecuted further until a guardian ad litem for such husband be appointed by the court.

Sec. 68.406—New Mexico Statutes Annotated (1929)—In all other cases except such as wherein the husband is alleged to be non compos mentis service of process shall be had as in other civil actions."

NEW MEXICO

"Sec. 63. Hearing on Petition for Substitution—Judgment. Upon the hearing of the petition so filed, the court shall render judgment therein either dismissing said petition or adjudging the spouse filing same

Sec. 68.407—New Mexico Statutes Annotated (1929)—Upon the hearing of the petition so filed by the wife the court shall render judgment therein, either dismissing said petition or adjudging the wife thereafter to

to have such power of managing, controlling and disposing of the community property, either real or personal, formerly under the management, control and disposition of the other spouse as to the court may appear to be just, proper, equitable and to the best interests of said estate. Laws 1939, p. 359, § 13.

be the head of said community, with full power of managing, administering and disposing of the community property, either real or personal, with such limitation therein as to the court may appear to be in furtherance of justice.

NEW MEXICO

Sec. 64. Recording of Judgment in Proceeding for Substitution. All judgments rendered as in the preceding Section provided shall be recorded in the office of the county clerk of the county where any property affected thereby is situated and such judgment when so rendered shall be notice of the facts therein set out. Laws 1939, p. 360, § 14.

Sec. 68-408—New Mexico Statutes Annotated (1929).—All judgments rendered as in the preceding section provided shall be recorded in the office of the county clerk of the county where any property of the community affected thereby is situated, and such judgment when so recorded shall be notice of the facts therein set out.

WASHINGTON

Sec. 65. Death of Spouse—Administration of Community Property—Interest of Survivor—Homestead. Upon the death of the husband or the wife, the surviving spouse shall administer all community property in the same manner and with the same duties, privileges and authority as are vested in a surviving partner to administer and settle the affairs of a partnership upon the death of the other partner, as provided by Section 1197, Oklahoma Statutes

Sec. 1342—Remington's Revised Statutes, Washington (1932).—Upon the death of either husband or wife, one half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife or his or her half of the community

1931¹ provided that the surviving husband or wife shall not be disqualified from acting as executor or administrator of the estate of the deceased husband or wife; and provided further, that the survivor of the husband or wife shall pay out of the community property, except the homestead and exempt property, all debts of the community, whether created by the husband or the wife; and provided further, that when all debts of the community shall have been fully satisfied the survivor shall transfer and convey to the administrator or executor of the deceased one-half of the community property remaining to be administered and distributed as other property of the estate either subject to the terms of the will of the deceased or under the laws of descent and distribution as the case may be, and thereafter all the interest of the surviving partner in said community property shall be that of a tenant in common; and provided further, that any interest in a homestead so conveyed shall not be subject to administration under the laws of this State, except in the manner provided by law at the time of the enactment of this Act. Laws 1939, p. 360, § 15.

property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living, or none of their representatives living, then the said community property shall all pass to the survivors (survivor?) to the exclusion of collateral heirs, subject to the community debts, the family allowance and the charges and expenses of administration.

NOTE—All other community property states have statutes whereby on the death of either husband or wife the community terminates, the survivor takes possession and control of his or her vested one-half interest in the community property subject to the payment of community debts, and the one-half interest of the deceased spouse passes to his heirs, legatees or devisees. See e. g. Section 39-109 Arizona Code Annotated 1939²; Section 201, California Probate Code, Texas Statutes 1936; Section 1342 Remington's Revised Statutes of Washington 1932. The procedure of the distributing the community property to the owners varies from state to state.

(1) Section 255 of Title 58, Probate Procedure

APPENDIX E

PROPERTY RIGHTS OF
HUSBAND AND WIFE UNDER
OKLAHOMA STATUTES

Petitioner on pages 43-48 of his brief and in Appendix B of his brief argues that spouses who have chosen to come under the Oklahoma Community Property Law have not worked any substantial change in their marital property rights. Petitioner seeks to sustain this argument by a comparative statement of his opinions of the property rights of Oklahoma husbands and wives under Oklahoma laws.

Petitioner's first comparison is:

*Spouses Not Electing
Community Property*

(1) Apart from mutual obligation of support wife has no legal interest in husband's earnings or in income from his separate property, and husband has no legal interest in wife's earnings or in income from her separate property. Oklahoma Statutes Annotated, Title 32, Sections 3-4.

*Spouses Electing Com
munity Property*

(1) Apart from mutual obligation of support wife can assert no right in husband's earnings or in income from his separate property, and husband can assert no right in wife's earnings or in income from her separate property. Title 32, Section 56.

Respondent's comments are:

Sections 53, 54, and 56 of the Oklahoma Community Property Law provide that the earnings of each spouse and the income from their separate property are community property and that each spouse owns an undivided one-half interest therein.

The Oklahoma courts have so held. Section 65 provides that, upon the death of one spouse, the community property shall be divided equally between the survivor and the personal representative of the deceased spouse. In Texas, where each spouse likewise has a vested interest in the earnings of the other spouse and in the income from the separate property of the other spouse, the courts have held that one spouse is entitled to an accounting when community property has been used for the benefit of the other's separate estate.² Accordingly, under the Oklahoma community property law, each spouse owns a present vested proprietary interest in the earnings of the other spouse and in the income from his or her separate property, whereas before the enactment of that law each spouse had no such interest.

Petitioner's second comparison is:

(2) Apart from the obligation of support the husband's earnings and the income from his separate property are not subject to the wife's debts, and the wife's earnings and the income from her separate property are not subject to the husband's debts. Title 32, Section 9, *Baker v. Witten*, 1 Okla. 160.

(2) Apart from the obligation of support the husband's earnings and the income from his separate property are not subject to the wife's debts, and the wife's earnings and the income from her separate property are not subject to the husband's debts. Title 32, Sections 57 and 58.

Respondent's comments are:

Petitioner has ignored the following provision in Section 58 of the Oklahoma law:

(1) *Harmon v. Oklahoma Tax Commission*, 189 Okla. 475, 118 P. (2d), 205.

(1941), Oklahoma Tax Commission Order 9513, filed July 30, 1940. Appendix C supra.

(2) *Rockett v. Mitchell*, 52 Civ. App. 589, (1908), 114 S.W. 845.

Dukan v. Dukan, 83 S.W. (2d), 620 (Sup. Ct. Tex. 1935).

Colder v. Alexander, 171 S.W. (2d), 328 (Sup. Ct. Tex. 1943).

"* * * the husband or wife on paying community debts shall, as between themselves, charge the same against community property."

The earnings of each spouse and the income from their separate property, being community property, are subject to the community debts incurred by the other spouse. Therefore, the position of the spouses under the Oklahoma community property law differs materially from their position under the marital property system of Oklahoma existing prior to the enactment of that law.

Petitioner's third comparison is:

(3) The spouses may contract with each other respecting their property rights. Title 32, Section 5."

(3) Spouses may give, grant, bargain, sell or convey directly to each other any community right, title, interest or estate. Title 32, Section 59."

Respondent's comments are:

Since a person cannot legally and effectively "give, grant, bargain, sell or convey" property without being an owner, the statutory recognition of the power in one spouse to make such disposition of "his or her community right, title, interest or estate in * * * community real or personal property" can only be founded upon the legislative recognition that such spouse is the owner of the community interest subject to his or her disposition. Furthermore, the limitation of the power of disposition in the community property statute to "his or her community right, title, interest or estate in * * * community real or personal property" is an express recognition of the fact that the disposing spouse is not the owner of the entire property subject to disposition. Petitioner's third comparison, therefore, in fact supports respondent's position.

Petitioner's fourth comparison is:

"(4) In the event of divorce the wife may have alimony in such amount as the court may deem just and equitable. With respect to property acquired by the parties jointly during their marriage whether the title thereto be in either or both of said parties, the court shall make such division between the parties respectively as may appear just and reasonable." Title 12, Section 1278."

"(4) In the event of divorce community property shall be divided between the parties, in such proportion as the court from the facts in the case shall deem just and equitable. Title 32, Section 60. The election of the community rather clearly does not affect the wife's right to alimony under the general statutes."

Respondent's comments are:

Divorce is not generally regarded as one of the results which normally flows from marriage. Nevertheless, a provision similar to this one is contained in the community property laws of all of the other community property states except Louisiana and New Mexico. See Appendix F, *infra*, p. 86. For example, in Washington "the court shall also make such disposition of the property of the parties as shall appear just and equitable * * *". At all events, no positive invasion of the vested equal ownership in the community property of a husband and wife flows as a necessary consequence of a divorce. Therefore, the petitioner's comparison here is without significance.

Petitioner's fifth comparison is:

(5) On imprisonment or abandonment of one spouse the other may by court action succeed to the management and

(5) On the incapacity or abandonment by one spouse the remaining spouse may by court action be substituted to manage.

control of the other's property.
Title 32, Section 13."

control and dispose of the community property formerly managed, etc., by the other. Title 32, Section 61."

Respondent's comments are:

Plainly, nothing more than management, control, and disposition is here involved. New Mexico has an almost identical statute.¹ Ownership, or the vested equal interests, of the spouses under the Oklahoma community property law are not directly affected by or dependent upon whether one spouse has the right of management, control, and disposition, and the other spouse does not. This is true of the community property laws of the other community property states.² This comparison is, therefore, pointless and without force.

Petitioner's sixth comparison is:

(6) If not more than one child, one-half of the estate goes to surviving spouse. If more than one child then surviving spouse takes a one-third share. Title 84, Section 213. No spouse can defeat the other's right of intestate succession by will. Title 84, Section 44."

(6) On death of one spouse one-half of the community property after payment of community debts goes to the survivor. The other passes under the terms of the deceased's will or under the laws of descent and distribution. Title 32, Section 65."

Respondent's comments are:

Petitioner, with some apparent reluctance, admits on page 46 of his brief that the spouses' rights of inheritance differ under the Oklahoma community property law from what they were before. Respondent asserts

(1) Secs. 68-704 ff. New Mexico Statute Annotated 1929.

(2) *Poe v. Seaborn*, 282 U. S. 101, (1930), (Washington);
Goddell v. Koch, 282 U. S. 118, (1930), (Arizona);
Bender v. Pfaff, 282 U. S. 127, (1930), (Louisiana);
Hopkins v. Bacon, 282 U. S. 122, (1930), (Texas);
United States v. Malcolm, 282 U. S. 292, (1931), (California).

that their rights necessarily are different under the community property law because they grow out of the statutory recognition of vested community ownership and not out of common law. Thus, the rights of the wife under the Oklahoma community property law do not consist of an expectancy granted by law in lieu of dower, but are the fruits of vested ownership not subject to testamentary disposition on the part of her husband. Petitioner's sixth comparison in fact sustains the proposition that the rights of the wife are changed by reason of the Oklahoma community property law, and not petitioner's argument.

APPENDIX F
ANALYSIS OF COMMUNITY PROPERTY LAWS

| | DEFINITIONS OF COMMUNITY PROPERTY | | | VESTED INTEREST | POWER OF DISPOSITION | | | | CREDITORS' RIGHTS | | | |
|----------------|---|--|--|---|---|--|---|--------------------|--|--|--|--|
| | Are the earnings of each spouse community property? | Are the claims from the separate property of each spouse community property? | Is property acquired by gift devise or descent community property? | Does the wife have present vested interest in all community property? | Does the husband have power to dispose of his own earnings? | Does the husband have power to dispose of all other community personal property? | Does the husband have power to dispose of all community real property except the homestead? | | Is the separate property of the wife ever liable for community debts? | Is the separate property of the husband ever liable for community debts? | Is the community property ever liable for the separate debts of the husband? | Is the separate property ever liable for the separate debts of the wife? |
| ALABAMA (1) | YES (56) | YES (56) | NO (53, 54) | YES (56) Horton v. Oklahoma Tax Comm. 118 P. 2d 205 | YES (56) | NO (56) | NO (56) | NO (56) | YES (57) | YES (57) | YES (57) | Y () |
| ALASKA (2) | YES (4619) | YES (4613, 4614, 4619) | NO (4613, 4614) | YES Hopkins v. Bacon 282 U.S. 122 | YES (4619) | YES (4619) | YES (4619) | YES (4619) | NO Hawkins v. Braxton, 52 SW (2) 243; Panhandle L. Lindsey, 72 SW (2) 1068 | YES Moody v. Smoot, 14 SW 285 | YES Moody v. Smoot, 14 SW 285; Crim. v. Austin, 6 SW (2) 348 | (4) Crim. v. SW () |
| ARIZONA (3) | YES (6892) | NO (6890, 6891, 6892) | NO (6890, 6891, 6892) | YES Scaborn 282 U.S. 101 | YES (6892) | NO (6895) | YES (6892) | NO (6893) | YES (6906) | YES (6906) | NO Snyder v. Springer, 198 P. 733 | N (6) |
| ARIZONA (4) | YES (63-301) | NO (63-302) | NO (63-302) | YES Goodell v. Eech 282 U.S. 118 | YES (63-301) | YES (63-301) | YES (63-301) | NO (71-409) | YES (63-305) | YES (63-305) | NO Forsythe v. Paschal, 271 P. 865 | N Forsythe 271 P. |
| LOUISIANA (5) | YES (2334, 2402) | YES (2336, 2402) | NO (2334) | YES Bender v. [unclear] 182 U.S. 127 | YES (2404) | YES (2404) | NO (34-2404) | NO (2334, 2402) | NO First State Bk. v. Brown, 150 So. 86 | | | N (24) Demack Hailick 1 |
| CALIFORNIA (6) | YES (164) | NO (162, 163) | NO (162, 163) | YES 7161a) U.S. v. Malcolm 282 U.S. 792 | YES (172) | YES (172) | NO (172) | NO (172) | YES (171, 176) | | YES Grolemond v. Cafferata, 111 P. (2) 641 | Y Johnson 4 P. () |
| IDAHO (7) | YES (31-907) | YES (31-907) | NO (31-903) (31-906) | YES Kohn v. Dunbar 121 P. 544 | YES (31-913) | NO (31-914) | NO (31-914) | NO (31-913) | YES (31-912, 31-916) | | YES Holt v. Empey, 178 P. 703 | N Hall v. 105 |
| NEVADA (8) | YES (3356) | NO (3355) | NO (3355) | YES In re Williams Estate, 36 P. 541 | YES (3360) | NO (3360) | YES (3360) | YES (3360) | YES (3371, 3378) | | | |
| MEXICO (9) | YES (68-401) | NO (68-302, 68-303) | NO (68-302, 68-303) | YES Baca v. Village of Belen, 240 P. 803 | YES (68-403) | YES (68-403) | YES (68-403) | NO (68-403) | YES (68-105, 68-307) | | | N (68) |

1. Figures in parentheses are section numbers of Oklahoma Statutes Annotated, Title 42, Permanent Edition.

2. Figures in parentheses are article numbers of Vernon's Texas Revised Civil Statutes 1947.

3. Figures in parentheses are section numbers of Remington's Revised Statutes 1892, Washington.

4. Figures in parentheses are section numbers of Arizona Code Annotated 1939.

5. Figures in parentheses are section numbers of Louisiana Civil Code 1912.

6. Figures in parentheses are section numbers of California Civil Code 1947.

7. Figures in parentheses are section numbers of Idaho Code Annotated 1912.

8. Figures in parentheses are section numbers of Nevada Compiled Laws 1929.

9. Figures in parentheses are section numbers of New Mexico Statutes Annotated 1920.

LAWS

CREDITORS' RIGHTS

TERMINATION OF COMMUNITY

| Is the separate property of the wife ever liable for community debts? | Is the separate property of the husband ever liable for community debts? | Is the community property ever liable for the separate debts of the husband? | Is the community property ever liable for the separate debts of the wife? | When husband dies is one half of community property subject to his testamentary disposition and does remaining one half belong to his widow? | Upon divorce may the court assign more than one half of the community property to one spouse? |
|--|--|--|---|--|---|
| YES (57) | YES (57) | YES (57) | YES (57) | YES (65) | YES (60) |
| NO Hawkins v. Britton, 52 SW (2) 243; Panhandle L. Lindsey, 72 SW (2) 1068 | YES Moody v. Smoot, 14 SW 285 | YES Moody v. Smoot, 14 SW 285; Crim v. Austin, 6 SW (2) 348 | YES (4623) Crim v. Austin, 6 SW (2) 348 | YES (3628) | YES (4638) |
| YES (6906) | YES (6906) | NO Snvder v. Stringer, 198 P. 733 | NO (6905) | YES (1342) | YES (989) |
| YES (63-305) | YES (63-305) | NO Forsythe v. Paschal, 271 P. 865 | NO Forsythe v. Paschal, 271 P. 865 | YES (39-109) | YES (27-805) |
| NO First State Bk. v. Brown, 150 So. 86 | | | NO (2403) Demack Motors v. Hallick, 119 So. 572 | YES (915-2406) | NO (2406) |
| YES (171-176) | | YES Grolmund v. Caterata, 111 P. (2) 641 | YES Johnson v. Taylor, 4 P. (2) 999 | YES (201) | YES (146) |
| YES (31-912, 31-916) | | YES Holt v. Empey, 178 P. 703 | NO Hall v. Johns, 105 P. 71 | YES (14-113) | YES (31-712) |
| YES (3371, 3378) | | | | YES (3395-02) | YES (3366) |
| YES (68-105, 68-307) | | | NO (68-402) | YES (38-105) | NO Beals v. Aves, 185 P. 780 |